



TO: Dave D.
FR: Bonnie R.
DT: 5/26/94
RE: MWI Cable systems, Inc. Suit

Attached is a list of phone conversations between myself and Patrick Luttrell at MWI Cable Systems, Inc. to be added to the letters that are included in the paperwork for the FCC.

Below is a list of the phone conversations between WNIN's Bonnie Rheinhardt and MWI's Patrick Luttrell.

- 8/24/93 Ms. Rheinhardt calls Mr. Luttrell and asks when WNIN will be added to MWI systems in Pleasant Ridge and Montgomery. Mr. Luttrell replies that WNIN will be added in Pleasant Ridge, Kentucky and Montgomery, Indiana as soon as possible.
- 12/10/93 Ms. Rheinhardt calls Mr. Luttrell and asks when WNIN will be added to MWI systems in Pleasant Ridge, Kentucky and Montgomery, Indiana. Mr. Luttrell replies that they are still in the process of adding channels and that WNIN should be on by 12/31/93.
- 1/4/94 Ms. Rheinhardt calls Mr. Luttrell and asks if WNIN is on in Pleasant Ridge and Montgomery. Mr. Luttrell replies that he does not know, but that if WNIN is not on then they are in the process of adding the channel. Mr. Luttrell states that he will provide WNIN with written notification when he finds out if WNIN is on in Pleasant Ridge and Montgomery.
- 1/28/94 Ms. Rheinhardt calls Mr. Luttrell and asks if WNIN has been added to the MWI systems in Pleasant Ridge and Montgomery. Mr. Luttrell replies that WNIN is on in Pleasant Ridge but does not know what the channel number is. He also states that MWI is still in the process of adding in Montgomery.
- 5/23/94 Ms. Rheinhardt contacts Mr. Luttrell after noticing that WNIN was not listed in an area TV listings for Pleasant Ridge. Mr. Luttrell states that WNIN is not carried in Pleasant Ridge or Montgomery.



85 Industrial Drive
Martinsville, Indiana
46181

Administrative Office:
817-843-1370

Customer Service:
1-800-466-0800

Fax: 817-843-4019

May 31, 1994

Mr. David Dial
President/General Manager
WNIN--PBS TV 9
405 Carpenter Street
Evansville, IN 47708

Mr. Dial,

Unfortunately, I was made aware of our ongoing difficulties with WNIN-9 just last week, although I understand you have had difficulty in dealing with various (former) members of our management team for some time.

Last week, I had a technician visit two headend sites for the purpose of measuring WNIN signal strength. The systems were in Pleasant Ridge, Kentucky, and Montgomery, Indiana.

Here is a summary of our findings:

(A) ~~Pleasant Ridge, KY~~

Testing done:	5/27/94
Equipment:	Lindsay 10SYU7 Antennae & SAM 1000
Time:	10 AM
Notes/Comments:	"Good signal...no problem at all"
Resolution:	I propose we add WNIN-9 to this system on July 8, 1994. This allows us time to provide 30-day subscriber notices as required per FCC.

(B) ~~Montgomery, Cannelburg, IN~~

Testing done:	5/25/94
Equipment:	Wavetek Tuneable Dipole @ 20' high and SAM 2000
Weather:	80 degrees...partly sunny
Signal levels:	12:30 pm -18.6 db
	1:10 pm -19.2 db
	1:50 pm -19.4 db
	2:30 pm -18.4 db

using an average of -19.0 db and converting to a dbm basis, our conversion shows an average reading

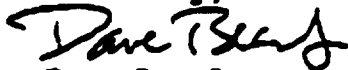
WNIN-900152

of -72.5 dba. This is clearly above the minimum required per FCC rules/regulations, etc.

Having said this, it appears that the burden of providing "adequate" signal falls back to WNIN. My records indicate that we have a total of 230 subscribers in this system. From your perspective, is it worth investing in equipment to "improve" your signal quality for such a small segment?

I apologize for the ongoing lack of communication between MNI/USA Cable and WNIN, Channel 9. I am making plans to launch WNIN-Channel 9 in Pleasant Ridge, KY, on 7/10/94. Let's talk about options regarding Montgomery. If, by the way, you are interested in sending one of your technical representatives to check the Montgomery readings, please give me ample lead time so I can schedule Matt Gardink, who took the original readings, to join your staff.

Sincerely,



Dave Beasley
Director of Marketing
Regional Cable TV (USA) Inc.



Bonnie

AVID L. DIAL
PRESIDENT & GENERAL MANAGER

June 1, 1994

Mr. Dave Beasley
Director of Marketing
MW1 Cablesystems, Inc
35 Industrial Drive
Martinsville, IN 46151

Dear Mr. Beasley:

I am in fax receipt of your letter of May 31, 1994 concerning the difficulties WNIN has encountered with MW1.

I must inform you that last week I sent a complaint outlining these problems to our Washington D.C. legal counsel to be filed with the FCC. If we can work out this matter in a satisfactory manner, WNIN will withdraw this complaint.

The day your technicians made the measurements for the Montgomery/Cannelburg, IN system, WNIN was operating at partial power. At this time we have now resumed full power operation.

We request you remeasure WNIN's signal within the next week. Since WNIN is presently carried on cable systems at a much greater distance than Montgomery/Cannelburg, IN I am confident our signal will qualify for carriage here as well. Our Chief Engineer, Jerry Kissinger would like to be present at the time you remeasure our signal.

I am pleased to know that MW1 will be adding WNIN to its Pleasant Ridge, KY system on July 8, 1994. We look forward to serving the viewers of this community.

If this is acceptable to you, please respond in writing to me by mail or fax by June 6, 1994. Thank you.

Sincerely,


David L. Dial
President and General Manager



25 Industrial Drive
Martinsville, Indiana
46151

Administrative Office:
817-343-1370

Customer Services:
1-800-466-0800

Fax: 317-343-4919

Bounce

June 1, 1994

Mr. David L. Dial
President/General Manager
WNIN/PBS-9
Evansville, IN 47708

Mr. Dial,

Per today's letter, I'll attempt to arrange another signal measurement meeting. As soon as I confirm a time, I'll share this information with Jerry Kissinger.

Unfortunately, it might take 5-6 "business" days before we have someone available again. The nature of our business is such that our field technician's time is extremely valuable. Having said that, I'll attempt to secure Matt Gerdink's "next" available block of 2-4 hours in the Montgomery area.

Regarding your complaint to the FCC, I don't blame you for following that path. Given the inconsistent communication between MWI and WNIN, it's probably your "last" chance tactic. Whether or not you continue to pursue this matter is your choice. My only interest here is in duly responding to your issues, now that I am aware of them.

Thank you for your time and attention.

Sincerely,

Dave Beasley

Dave Beasley
Director of Marketing
Regional Cable TV (USA) Inc.

F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TURNER BROADCASTING SYSTEM,
INC., *et al.*

Plaintiffs,

v.

FEDERAL COMMUNICATIONS
COMMISSION, *et al.*

Defendants.

Civil Action No. 92-2247 (and
Consolidated Cases Civil
Action Nos. 92-2292, 92-2494,
92-2495, 92-2558)
(SFW, TPJ, SS)

DECLARATION OF DAVID FOGARTY

1. My name is David Fogarty. I am the President and General Manager of WPTD and WPTO, public television stations operating in Dayton, Ohio, and Oxford, Ohio, respectively. I have been President and General Manager of both stations since 1993. From 1988 to 1993, I was Director of Broadcasting and Telecommunications for the stations. Prior to 1988, I was a Manager and Senior Producer at Twin Cities Public Television, Inc. (KTCA and KTCT).

2. WPTO, Channel 14, and WPTD, Channel 16, are both noncommercial educational broadcast television stations licensed to Greater Dayton Public Television, Inc. WPTO began broadcasting in 1959, and WPTD began operations in 1972. In 1975, the two stations merged and from that time until 1992, the stations carried much of the same programming. WPTO initiated an independent schedule of educational programming on July 1, 1992. The two stations have

broadcast substantially unduplicated program schedules since that time. The stations have separate program missions and 80 percent of all programming offered on either station is differentiated by program and series title. Each station acquires programming from a variety and from differing program distributors.

3. Both WPTD and WPTO are qualified noncommercial educational television stations as defined in subsection (1)(1) of Section 5 of the 1992 Cable Act. WPTD and WPTO have been separately qualified by the Corporation for Public Broadcasting, and both stations are independent members of the Public Broadcasting Service. WPTD and WPTO are local stations as defined in subsection (1)(2) of Section 5 of the Act with respect to the cable systems discussed below.

4. Prior to the enactment of the 1992 Cable Act, WPTO and WPTD were not carried on many of the cable systems that were within the stations' Grade B contours or within 50 miles of the stations' city of license. This was particularly significant for the stations as the areas that are served by WPTO and WPTD are approximately 65 percent cabled. From my experience, cable subscribers will not generally watch a station that is not carried on their cable system. Prior to the 1992 Cable Act, WPTO was carried on no more than six cable systems to which it is local, while WPTD was carried on approximately 40 cable systems to which it is local. The stations had made some efforts to gain carriage on additional systems prior to 1992, but these efforts were limited because we knew we had no legal remedy for non-carriage.

5. With the passage of the Cable Act, Greater Dayton Public Television, on behalf of WPTD and WPTO, requested carriage and channel positioning on more than 85 cable systems on which it appeared that one or both stations were entitled to be carried. Starting in November of 1992, letters requesting carriage were sent to Time Warner, TCI, Telesat Cable, Northern Ohio

Cable, Oak Cable-Systems, and Paxton Cable, among others. Letters were also sent to systems that were already carrying WPTD requesting carriage on the station's over the air channel.

6. Obtaining cable carriage and channel positioning for WPTD and WPTO took over two years of very substantial effort by my predecessor, Jerrold Wareham, Greater Dayton's Chief Engineer, Fred Stone, Greater Dayton's counsel, Jill Josephson, and me. In order to secure carriage on the systems and channel positions to which the stations were entitled, we had to write hundreds of letters, hold face to face meetings with the cable operators, place dozens of telephone calls and, finally, file 40 must carry complaints with the Federal Communications Commission.

7. Of the 40 FCC complaints filed by Greater Dayton with the FCC, Greater Dayton was entitled to carriage (assuming it delivered a good quality signal) in 39. The Commission ruled in 33 cases that the cable company was required to carry the station in question on the channel requested. Greater Dayton voluntarily dismissed six of the complaints when the cable company agreed to provide carriage as requested. The Commission rescinded five of the orders after Greater Dayton agreed that it did not provide a good quality signal to the cable systems and determined that it was not cost-effective, at that time, to attempt to bolster its signals to the requisite level. In two additional cases, after the Commission ordered carriage of the station, Greater Dayton decided not to pursue carriage due to similar economic considerations. In only one case was the complaint dismissed because the FCC was unable to determine that the station was local to the cable system.

8. The following is a brief summary of Greater Dayton's experience with cable systems that refused carriage and repositioning requests

following enactment of the must carry provisions. Copies of selected documents relating to the experience with each system are attached as Exhibits 1 through 11.

a) **Sammons Communications:** Greater Dayton sought carriage from Cardinal Communications, the predecessor to Sammons, for WPTO and WPTD on Cardinal's systems in Liberty, Brookville, Connersville, Rushville, and Batesville-Oldenburg, all in Indiana. Cardinal, and later Sammons, responded that it would carry WPTO and WPTD in Liberty and that, among other things, in order to carry the stations in Brookville, Connersville and Rushville, certain engineering changes would have to be made and that Greater Dayton would be required to absorb the costs. In addition, Greater Dayton was asked to pay certain copyright fees prior to carriage, a demand that was inconsistent with the statute.

In October of 1993, Greater Dayton filed complaints with the FCC seeking carriage of WPTO and WPTD in Connersville and Brookville. The FCC granted Greater Dayton's request and ordered Sammons to carry WPTD on channel 16 (see CSR-4089-M) and to carry WPTO on channel 14 (see CSR-4090 -M) on the system serving Connersville. The Commission also ordered Sammons to carry both WPTO and WPTD in Brookville (see CSR-4041-M and CSR-4042-M). The FCC orders relating to Sammons are contained in Exhibit 1.

b) **TCI:** Prior to the enactment of the Cable Act, one or both of the Greater Dayton stations had not been carried on TCI cable systems in the following communities: Celina, Ohio (WPTD), Lynn, Indiana (WPTD, WPTO), Winchester, Indiana (WPTO, WPTD), New Castle, Indiana (WPTO), Richmond, Indiana (WPTO), and Dublin, Indiana (WPTO), Golf Manor, Ohio (WPTO), Middleton, Ohio (WPTO), Wilmington, Ohio (WPTO), and Hamilton, Ohio (WPTO). Upon request, WPTD was added to Celina. With respect to the other systems, TCI was unwilling to satisfy its statutory obligations. Generally, TCI in Indiana refused to carry the stations at all. TCI in Ohio, while somewhat more

willing to carry the stations, generally refused to satisfy the channel election requirements. After many discussions with TCI representatives, Greater Dayton was forced to file a number of complaints with the FCC seeking carriage where the stations were not carried and seeking carriage on the stations' over-the-air channels in the numerous other areas. Three of the cases were voluntarily dismissed when TCI subsequently agreed to Greater Dayton's request (see CSR-3931-M; CSR-3932-M; and CSR-3934-M). In the remaining cases the Commission granted Greater Dayton's requests (see CSR-3935-M; CSR-3936-M; CSR-3937-M; CSR-3938-M; CSR-3939-M; and CSR-4168-M - CSR 4172-M). Nonetheless, in both Richmond and Lynn, TCI failed to carry the station on the appropriate channel within the time ordered by the Commission. The changes were made after Greater Dayton was forced to file a petition for forfeiture against TCI to obtain compliance with the FCC orders. Exhibit 2 contains the FCC orders relating to TCI.

c) Oak Cable Systems: In 1993, Greater Dayton requested carriage of WPTO by Oak Cable Systems on its St. Paul and Waldron, Indiana systems. Oak Cable failed to respond to the request within the required time, and it was necessary for Greater Dayton to file complaints with the FCC. In opinions released on December 9, 1993, the Commission ordered Oak Cable to commence carriage of WPTO on Channel 14 on the Waldron and St. Paul systems. The FCC orders relating to Oak Cable, CSR-3941-M and CSR-3940-M, are contained in Exhibit 3.

d) Country Cable System: In May of 1993, Greater Dayton sent letters requesting carriage of WPTD in Greens Fork, Indiana, and carriage of WPTO in Holton, Glenwood and Greens Fork, Indiana. When Country Cable failed to respond to these requests, Greater Dayton filed complaints with the FCC to which Country also did not respond. In decisions released in December of 1993, the Commission ordered Country Cable to carry WPTO in Glenwood, Greens Fork,

and Holton, and to carry WPTD in Greens Fork (see CSR-3943-M, CSR-3942-M, CSR-3945-M and CSR-3944-M, attached as Exhibit 4).

e) KAS Cable: When KAS Cable declined to carry WPTO on its system at the Wright Patterson Air Force Base, WPTO filed a complaint with the FCC seeking carriage. KAS eventually agreed to carry WPTO at about the same time that an FCC order was adopted requiring carriage (see CSR-4032-M attached as Exhibit 5).

f) Northern Ohio Cable: In December of 1992, Greater Dayton requested carriage of WPTO and WPTD on Northern Ohio's Wayne County, Indiana system. Northern Ohio did not respond to this request or an additional request for carriage and headend information. Subsequently, Greater Dayton filed complaints with the FCC, to which Northern Ohio filed no opposition. In an opinion released on January 12, 1994, the Commission ordered Northern Ohio to commence carriage of both stations on the Wayne County system. The FCC order relating to Northern Ohio, CSR-3978-M and CSR-3979-M, is contained in Exhibit 6.

g) Sunman Cable: Greater Dayton sent several requests to Sunman to carry WPTO in Sunman, Indiana. When Sunman failed to make a timely response, Greater Dayton filed a complaint with the FCC. Sunman filed no opposition. Subsequently, Greater Dayton and Sunman negotiated a settlement of the complaint, with Sunman agreeing to add WPTO. Greater Dayton then requested that the Commission dismiss the complaint. That request was not received at the Commission, however, prior to its decision ordering Sunman to carry WPTO on Channel 14. (See CSR-3484-M, attached as Exhibit 7)

h) B&L Cablevision: In December 1992, Greater Dayton requested carriage of WPTD on the B&L system in Port William, Ohio. In 1993, Greater Dayton again requested carriage of WPTD on B&L's system, which Greater

Dayton had determined also serves Bowdersville. B&L denied that request, and Greater Dayton filed a complaint with the Commission. B&L then agreed to carry WPTD, and Greater Dayton asked the Commission to dismiss the complaint without prejudice. (See CSR-4038-M, attached as Exhibit 8)

i) Paxton Cable: In late 1992, Greater Dayton requested carriage of WPTD on the cable systems owned by Paxton Cable Television in Fayette County, Indiana and Madison County, Ohio. In 1993 Paxton notified Greater Dayton that it would not be able to carry WPTD in Midway, Ohio (Madison County) because of the small size of the system. After Greater Dayton filed a complaint, to which Paxton did not reply, the Commission ordered Paxton to carry WPTD in Midway on channel 16. Exhibit 9 contains the FCC decision relating to Paxton, CSR-4028-M.

j) Dimension Cable: Greater Dayton began requesting carriage for both WPTD and WPTO on the Dimension systems in December of 1992. In 1993, Dimension and Greater Dayton were unable to come to an agreement on the carriage of WPTD in Washington Court House and the surrounding communities in Ohio. Greater Dayton then filed a complaint with the FCC. On February 2, 1995, the Commission ordered Dimension to carry WPTD on Channel 16 on the system serving Washington Court House, Bloomingburg, Sabina, Jeffersonville, Milledgeville, Octa, Union and portions of Clinton County. The FCC order relating to Dimension (CSR-4027-M) is attached as Exhibit 10.

k) Time Warner: Although WPTD and WPTO were added to a large number of Time Warner systems after the must carry provisions went into effect, it was necessary for Greater Dayton, in August 1993, to file several complaints with the Commission seeking carriage for WPTD in Oxford, Ohio, Union City, Ohio, and Union City, Indiana. In late 1993, Time Warner agreed to carriage of WPTD on channel 16 on these systems, and the complaints were

subsequently dismissed. (See CSR-4029-M relating to Union City, Ohio and Union City, Indiana; and CSR-4030-M, relating to Oxford, Ohio contained in Exhibit 11.)

9. As a result of Greater Dayton's various negotiations, complaints, and other actions taken in order to secure carriage on cable systems, as of early 1995, WPTD is carried on approximately 70 cable systems, and WPTO is carried on approximately 50 systems. As noted in paragraph 4 above, prior to must carry WPTD was carried on approximately 40 systems and WPTO was carried on about 6.

[REDACTED]

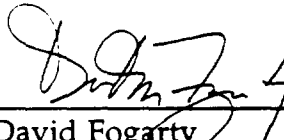
10. Obtaining this additional carriage for WPTD and WPTO was very costly for Greater Dayton. Due to the strong resistance from cable companies that we encountered, Greater Dayton was required to incur more than \$18,000 in legal costs for in-house and outside counsel. In addition, the effort consumed hundreds of hours of non-legal staff time, including large amounts of my time and the time of our engineering staff. As a result, our resources were diverted from station operations and other projects related to the educational mission of WPTD and WPTO. In addition, many cable subscribers were deprived of access to WPTD and WPTO during the period when Greater Dayton was facing resistance from the cable systems described above.

11. If must carry provisions were repealed, I believe that WPTD and WPTO would be dropped by many of the cable systems that have added them since early 1993. I base this opinion largely on the strong resistance Greater Dayton

encountered in attempting to enforce the stations' legal rights under the 1992 Cable Act. Without the must carry provisions, the Greater Dayton stations would not be able to reach many of the households that have been added since the beginning of 1993. Many of these households would be unable to receive the station's signal over the air because many cable subscribers do not have a working outdoor antenna. Non-carriage would necessarily result in loss of membership, which in turn would result in loss of individual financial contributions as well as underwriting support. Eventually this revenue loss, if large and lasting over a period of time, would affect the quality and quantity of the programming the stations could offer.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 19 July, 1995.



David Fogarty
President, WPTD and WPTO

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater Dayton
Public Television against
Sammons Communications, Inc.

CSR-4089-M
IN0057

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: August 19, 1994; Released: September 27, 1994

By the Chief, Cable Services Bureau:

1. On October 4, 1993, a petition on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTD (Educ., Ch. 16), Dayton, Ohio, was filed with the Commission claiming that Sammons Communications ("Sammons"), operator of a cable television system serving Connersville, Indiana,¹ had declined to carry the station, even though WPTD's city of license is within fifty miles of the system's principal headend located in Connersville at N. Latitude 39°37'55" and W. Longitude 85°06'10" and the station is therefore a "local" signal within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-365, 106 Stat. 1460 (1992). WPTD also requests that the Commission not only order Sammons to carry its signal, but also order the system to carry on Channel 16, the channel on which it broadcasts over-the-air. An opposition to this petition has been filed on behalf of Sammons to which petitioner has responded.

2. In support of its petition, WPTD states that prior to its formal request for carriage on June 1, 1993, it was informed by the system's previous owner, Cardinal Communications, Inc. ("Cardinal"), of its station's signal strength deficiency at the Connersville headend. At the same time, WPTD indicates that it was also informed of Cardinal's concerns over the possibility of increased copyright costs should WPTD be carried. In its June 1, 1993 letter, WPTD agreed to indemnify Cardinal for any increased copyright costs once specific estimates were supplied and asserted its right to carriage on cable channel 16. Cardinal subsequently presented an estimate of the expected copyright costs,² as well as signal quality readings performed on June 15, 1993, which indicated a +5 dBmV (or -44 dBm) signal

level for WPTD which meets our standards.³ Moreover, on the test sheet accompanying the engineering study, Cardinal answered affirmatively to the question as to whether the station met the signal quality standards. Despite this, however, the system requested that WPTD pay the costs of installing the equipment necessary to receive the station at its principal headend.⁴ Further, the system sought payment in advance for both the copyright fee and equipment costs as a condition of WPTD's carriage. By letter dated July 16, 1993, WPTD rejected both of these conditions. After the system was sold to Sammons, it also refused to carry the station until such time as it is reimbursed in advance for the costs of additional equipment and copyright liability. To date, WPTD states that it has not been added to the Connersville system.

3. In its response, Sammons states that it has had ongoing discussions regarding the carriage of WPTD, but the station has never been carried on the Connersville system in the past and no equipment is located on the tower which would enable it to receive the signal. Sammons maintains that the *Clarification Order in MM Docket No. 92-259*, 8 FCC Rcd 4142 (1993), requires the broadcaster, and not the system, to bear the cost of any specialized antennas or equipment necessary for the reception of a signal. It argues that in this instance it is only asking WPTD to pay for the cost of the antenna while Sammons states that it will buy other necessary equipment. Finally, Sammons emphasizes that it is not unreasonable to require WPTD to pay the expected copyright costs for its carriage in advance since Sammons will be ultimately responsible for such costs immediately upon adding the station.

4. WPTD states in reply that the *Clarification, supra*, requires a broadcaster to reimburse a system for equipment only in instances where such equipment is necessary to enhance a station's signal quality to enable it to provide a good quality signal. In this case, WPTD avers, test results have shown that it provides a good quality signal to the Connersville headend. Therefore, it insists, it is not required to pay for the cost of an antenna. Finally, WPTD maintains that since its predicted Grade B contour encompasses the entire community of Connersville, the only copyright liability that might incur from its carriage on Sammons' system would be for a community that falls outside the Grade B contour. Nevertheless, WPTD reiterates its willingness to pay any such costs, but insists that the Commission's rulings in the *Report and Order in MM Docket No. 92-259*, 8 FCC Rcd 2965 (1993), and *Clarification, supra*, do not require it to pay anticipated costs in advance.

5. We are not persuaded by Sammons' request that WPTD be required to reimburse the system for the cost of an antenna to receive the signals. The *Report and Order, supra*, at paragraph 104 states that "... we generally agree ... that it is the television station's obligation to bear the costs associated with delivering a good quality signal to the

¹ The Connersville system was operated by Cardinal Communications, Inc. up until July 22, 1993, when it was purchased by Sammons.

² On June 10, 1993, Cardinal indicated a copyright fee of approximately \$7,383.54 per six months period, but after discussion with WPTD agreed that the amount of \$1,110.48 per six months was a more accurate figure.

³ A standard of -45 dBm was established as a minimum for determining the availability of UHF commercial stations at a cable system's headend. Since these standards address the issue

of availability of a station's signal, consistent with Congress' guidance with respect to VHF and UHF commercial station availability, we see no reason not to utilize the same standard: as prima facie tests to initially determine whether a NCE station provides a cable system with a good quality signal.

In a breakdown of the costs associated with the purchase of the equipment necessary to add WPTD to its system (i.e. preamp, dish, etc.), Cardinal indicated that it would cost approximately \$1,165.33.

system's principal headend (emphasis supplied)." Further, at paragraph 11 of the *Clarification, supra*, we state that "cable operators may not shift the costs of routine reception of broadcast signals to those stations seeking must-carry status." In the instant case, Sammons does not dispute that WPTD provides a good quality signal to its headend. Therefore, WPTD is not obligated to provide the cost of any equipment Sammons feels necessary to receive its signal. In addition, as we stated at paragraph 114 of the *Report and Order, supra*, "We . . . believe that it is reasonable for a cable operator to receive a written commitment from a broadcaster that ensures that the [copyright] payments will be made once the actual amount of copyright liability is determined." WPTD has satisfactorily met this requirement. Further, at footnote 19 of the *Clarification, supra*, it states that ". . . a cable operator may not demand advance payment of estimated copyright fees as a condition for broadcasts to retain must-carry rights." As a result, Sammons cannot deny WPTD carriage on this ground.

6. WPTD's petition establishes that it is entitled to carriage on the Connersville cable system, and it has requested carriage on its over-the-air broadcast channel, as it is permitted to do under §5 of the 1992 Cable Act. Accordingly, the petition filed October 4, 1993, by Greater Dayton Public Television IS GRANTED, pursuant to §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Sammons Communications IS ORDERED to commence carriage of WPTD on cable channel 16 forty-five (45) days from the release date of this Order. This action is taken by the Chief, Cable Services Bureau, pursuant to authority delegated by §0.321 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Meredith J. Jones
Chief, Cable Services Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater Dayton
Public Television against
Sammons Communications, Inc.

CSR-4090-M
IN0057

Request for Carriage and
Channel Positioning

MEMORANDUM OPINION AND ORDER

Adopted: December 15, 1994; Released: December 21, 1994

By the Cable Services Bureau:

INTRODUCTION

1. On October 5, 1992, the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act) became law.¹ On December 4, 1992, the 1992 Cable Act's requirements for mandatory carriage of certain noncommercial educational stations set forth in §5 of the 1992 Act became effective.² On October 4, 1993, Greater Dayton Public Television (GDPT), licensee of station WPTO (Educ., Channel 14), Oxford, Ohio, filed a complaint seeking to ensure WPTO's carriage on channel 14 on the cable system of Sammons Communications, Inc., serving Connersville, Indiana. Sammons became the successor-in-interest of the petition filed by Cardinal Communications, Inc. on July 22, 1993. On October 28, 1993, Sammons filed an opposition to this complaint. GDPT filed a reply to this opposition on November 8, 1993.

SUMMARY OF PLEADINGS

2. GDPT maintains that, despite its status as a qualified noncommercial television broadcast station that operates within 50 miles of the principal headend of Sammons' Connersville cable system, Sammons refuses carriage of the station on its requested channel position. Sammons seeks a ruling that it is not required to carry WPTO until the station pays for equipment which is necessary to receive its signal, and further pays the estimated increase in copyright royalty payments associated with its carriage or, in the alternative, establishes a letter of credit in the amount of

the estimated fees. Sammons also seeks permission to carry WPTO on channel 18 in order to avoid the cost of removing traps currently on channel 14. WPTO states that Sammons is acting in violation of the 1992 Cable Act, and contrary to the Commission's implementing rules.

3. On July 19, 1993 WPTO was notified that Sammons Communications, Inc. had purchased Cardinal. GDPT wrote to Sammons on July 23, 1993 requesting confirmation that WPTO would be carried in Connersville on channel 14 by a date specific. Sammons replied on August 16, 1993 by stating that carriage in Connersville would require a \$1,176.33 advance payment for equipment (and installation of that equipment) necessary for a good quality signal, and needed either advance payment or a letter of credit to satisfy the \$1,110.48 copyright liability Sammons would incur for carriage of GDPT's stations. This letter does not specify whether these costs are related to the carriage of WPTO, or co-owned WPTD or both stations. Sammons again included a channel line-up for the Connersville system showing carriage of WPTO on channel 18.

4. Further correspondence between the parties failed to resolve these issues. In particular, on September 3, 1993 GDPT proposed channel 4 as an alternative channel position for its station on this system. Sammons responded to this proposal by reiterating its claim of a great expense to trap a pay channel currently carried on channel 14 and its inability to accommodate the request for channel 4 since another broadcast signal occupies that position. On October 4, 1993 GDPT filed its complaint with the Commission seeking carriage of WPTO on channel 14 in accordance with the terms of Section 5 of the 1992 Cable Act.

5. In its reply to the complaint, Sammons begins by noting that WPTO has not been carried in Connersville in the past. It states that no equipment has ever been located on the tower which would enable the Connersville system to receive WPTO's signal and, as such, WPTO must bear the costs of a specialized antenna and other equipment necessary for the cable system to receive a good quality broadcast signal from WPTO.³ Sammons asserts that to carry the complainant on channel 14 would require removing and replacing 560 channel traps at a total cost of approximately \$10,000. Additionally, Sammons argues that because carriage of WPTO would increase Sammons' copyright liability WPTO—prior to carriage—must either pay the estimated cost of the first copyright period or establish a letter of credit or other security for the period of the station's must carry election.⁴ Alternatively, Sammons requests that the Commission not require carriage until the Supreme Court decides the validity of the 1992 Cable Act's must-carry provisions.

6. In its reply to Sammons, WPTO states its belief that past correspondence confirming that the station would be carried on channel 18 proves that WPTO has met signal quality standards; thus no "specialized" antennas are neces-

¹ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

² 47 U.S.C. § 535. Compare with *Turner Broadcasting System, Inc. v. Federal Communications Commission*, 114 S. Ct. 2445 (1994). In remanding the case, the Court determined that issues of material fact must be resolved by the lower court. Specifically, the Court indicated that the government must show that the must-carry provisions are necessary to alleviate the alleged harms and that they do not burden substantially more speech than necessary to further such protection. *Id.* at 2451.

³ We note that in its complaint, GDPT indicates that it received signal quality measurement data for WPTD, but not for WPTO.

The Commission's must-carry implementing rules required a cable operator to notify all local broadcast stations not meeting a good quality signal by May 3, 1993. 47 C.F.R. § 76.58(d). GDPT received no information suggesting that WPTO did not provide a good quality signal. This is further confirmed by the inclusion of WPTO on the list of signals to be carried on June 23.

⁴ We note that the election of must-carry status for a three-year period applies only to commercial stations. Qualified local commercial stations request carriage under the provisions of Section 5 of the 1992 Cable Act and that request is not subject to any time limitation. Section 615(b)(1).

sary for Sammons to receive WPTO's signal. WPTO argues that where a broadcast station already delivers a good signal a cable operator may not shift the costs of routine reception of that signal to those seeking must-carry status.⁵ WPTO requests that the Commission review Sammons's current method of receiving WPTO and determine whether any existing antennas used to receive Cincinnati area stations (in the same general direction as Oxford) can be utilized to receive WPTO. Finally, WPTO states that it is located only 21 miles from Connersville and thus is a "local" signal for Copyright Act purposes; thus, Sammons will incur no copyright liability for the station's carriage.

DISCUSSION

7. We uphold WPTO's complaint against Sammons. With regard to the issue of signal quality, § 615(g)(4) of the Communications Act of 1934, as amended, states that "a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television station which does not deliver to the cable system's principal headend a signal of good quality or a baseband video signal, as may be defined by the Commission." 47 U.S.C. § 535(g)(4). Because the cable operator is in the best position to know whether a given noncommercial educational station is providing a good quality signal to the system's principal headend, we believe that the initial burden of demonstrating the lack of good quality signal appropriately falls on the cable operator. In meeting this burden, the cable operator must show that it has used good engineering practices, as defined below, to measure the signal delivered to the headend.

8. While the 1992 Cable Act does not state what constitutes a "good quality" signal where VHF or UHF noncommercial stations are concerned, the Act did adopt a standard for determining the availability of VHF and UHF commercial stations at a cable system's headend. To establish the availability of a VHF commercial station's signal, the Act set out a standard of -45 dBm at a cable system's headend. A standard of -45 dBm was established for UHF commercial station signals. Consistent with Congress' guidance with respect to VHF and UHF commercial station availability, we see no reason not to utilize the same standards as *prima facie* tests to initially determine, absent other evidence, whether VHF or UHF non-commercial stations place adequate signal levels over a cable system's principal headend. Where there is a dispute over signal level measurements, cable operators are expected to employ sound engineering measurement practices. Therefore, signal strength surveys should, at a minimum, include the follow-

ing: 1) specific make and model numbers of the equipment used, as well as its age and most recent date(s) of calibration; 2) description(s) of the characteristics of the equipment used, such as antenna ranges and radiation patterns; 3) height of the antenna above ground level and whether the antenna was properly oriented; and 4) weather conditions and time of day when tests were done.

9. While Sammons believes that additional equipment is needed to enable its Connersville system to receive a good quality signal for WPTO and that the station should purchase the needed equipment, we find that the cable operator has failed to substantiate its case. Though Cardinal Communications, Sammons's predecessor in interest, performed a signal strength test at its Connersville system for WPTD,⁶ no such signal strength data has been provided WPTO. Consequently, we find that Sammons failed to carry its burden of proof when it denied WPTO carriage based on inferior signal quality.

10. We also find that Sammons is required to carry WPTO on channel 14. Section 615(g)(5) of the 1992 Cable Act permits a noncommercial educational station to elect its over-the-air channel number as its channel position on a cable system.⁷ WPTO has properly requested carriage on channel 14 on Sammons' cable system the same channel number it is broadcast over the air. Under our rules, cable operators must comply with the channel positioning requirements absent a compelling technical reason. Sammons has failed to show a compelling reason to warrant waiver of the on-channel carriage requirement. Although we have stated previously that the need to employ additional traps or make technical changes are not sufficient grounds for waiver,⁸ we do believe that there are certain circumstances where the costs could be so compelling as to warrant a waiver of the rules. Apart from an unsupported claim that replacing the traps to allow it to carry WPTO on channel 14 would cost 10,000 dollars, Sammons has introduced no evidence demonstrating how such costs would substantially impact the cable system. Unsupported claims of costs in isolation are not grounds for waiver of the commission's rules. See *Chambers Cable of Oregon, Inc.*, 5 FCC Rcd 5640, 5641 (1990).

11. Finally, with regard to copyright liability, Sammons contends that its copyright liability would increase were it to carry WPTO. WPTO argues that its carriage would not result in Sammons' incurring additional copyright liability because its signal is considered "local" for copyright purposes. We begin by noting that copyright liability would not attach under the Copyright Act if, under our Rules in effect on April 15, 1976, WPTO would have been considered a "local" station entitled to carriage based on our

⁵ GDPT states that is unclear whether its signal is currently carried by this cable system since it received notification from Cardinal on June 1, 1993, that WPTO would be added to the Connersville system on channel 18 at that time. If it is being carried, complainant contends then its signal is being received with the currently available antenna.

⁶ Cardinal tested WPTD's signal. The test results, included in WPTO's pleadings, lists the headend location, the engineer's name, the type of antenna use, the level at which the reading was taken, tower height, calibration, measurement methodology, date and time of tests, weather at time of test, signal level. At the bottom of this document the word "yes" appears in response to the statement "meets quality signal standards".

⁷ Noncommercial educational stations are also allowed to choose their cable channel position based on the cable channel

on which it was carried on July 19, 1985. See 47 C.F.R. § 76.57(b).

⁸ "We do not believe that inconvenience, marketing problems, the need to reconfigure the basic tier or the need to employ additional traps or make technical changes are sufficient reasons for denying the channel positioning request of a must-carry signal. Only where placement of a signal on a chosen channel results in interference or degraded signal quality to the must-carry station or an adjacent channel, or causes a substantial technical or signal security problem, will we permit cable operators to carry a broadcast signal on a channel not chosen by the station." *Report and Order in MM Docket No. 92-259*, 8 FCC Rcd 2965, para. 91 (1993). Sammons has introduced no evidence which would indicate that removal of the necessary traps would constitute a substantial technical problem.

former must-carry rules.⁹ Section 76.57 of our former carriage Rules covered a cable system, such as the Connersville system, that "serves a community located wholly outside all major and smaller television markets." Under this former section, WPTO would have had must carry status if the Connersville system were within WPTO's Grade B contours; or if Connersville system were within WPTO's specified zone.¹⁰ A review of the pertinent information reveals that WPTO could have demand carriage under our former carriage rules as a "local" station under either criteria. Thus, Sammons has no claim to copyright indemnification.

12. Accordingly, the petition filed on October 4, 1993, by Greater Dayton Public Television, IS GRANTED, in accordance with Section 615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended. Sammons Communication, Inc., of Dallas, Texas IS ORDERED to commence carriage of WPTO on cable channel 14 forty-five (45) days from the release date of this Order. This Order shall take effect unless Sammons communications Inc., of Dallas, Texas submits, within fifteen (15) days from the release date of this order, engineering data which demonstrates WPTO's poor signal quality at the principal headend of Sammons communication Inc., of Dallas, Texas serving Connersville, Texas. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

⁹ 17 U.S.C. §111(d)(3)(A)-(C),(f) (1993).

¹⁰ A "specified zone of a television broadcast station is the area extending 35 air miles from the reference point in the commu-

nity to which that station is licensed or authorized by the Commission..." § 76.5(f) (former Rules).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater Dayton	CSR-4041-M
Public Television against	CSR-4042-M
Sammons Communications	IN0131

Requests for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: May 4, 1994:

Released: May 18, 1994

By the Chief, Cable Services Bureau:

1. On August 30, 1993, petitions on behalf of Greater Dayton Public Television, licensee of Television Broadcast Stations WPTD (Educ., Ch. 16), Dayton, Ohio, and WPTO (Educ., Ch. 14), Oxford, Ohio, were filed with the Commission claiming that Sammons Communications ("Sammons"), operator of a cable television system serving Brookville, Indiana,¹ had declined to carry the stations, even though the cities of license of WPTD and WPTO are within fifty miles of the system's principal headend located in Brookville at N. Latitude 39°25'23" and W. Longitude 85°01'53", and the stations are therefore "local" signals within the meaning of Section 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTD and WPTO also request that the Commission not only order Sammons to carry the signals, but also order the system to carry them on Channels 16 and 14, respectively, the channels on which they broadcast over-the-air. An opposition to these petitions has been filed on behalf of Sammons to which petitioner has responded.

2. In support of its petitions, WPTD and WPTO state that on May 3 and 24, 1993, respectively, each was informed by the system's previous owner, Cardinal Communications, Inc. ("Cardinal"), of its station's signal strength deficiency at the Brookville headend, however, no specific data were attached. At the same time, WPTD indicates that it was also informed of Cardinal's concerns over the possibility of increased copyright costs should WPTD be carried. By letter dated May 28, 1993, WPTD formally requested carriage on the Brookville system and agreed to indemnify Cardinal for any increased copyright costs once specific estimates were supplied and reasserted its rights to carriage on cable channel 16. To date, WPTD maintains that no copyright estimates have been received. On the same date, WPTO rejected Cardinal's notice regarding its

signal strength as untimely and failing to provide specific measurement information. In that letter, WPTO also reasserted its own carriage rights on cable channel 14. Subsequently, on June 10, 1993, petitioners state that Cardinal submitted signal strength test information which indicated a measurement of -45 dBm² for both WPTD and WPTO and requested costs for equipment in advance of the stations' carriage. Both stations point out, however, that on the test sheet provided by Cardinal the system indicates a yes in response to a question as to whether the signals meet the signal quality standards. On June 28, 1993, WPTD and WPTO again requested carriage and asserted that since both stations provide a good quality signal they are not responsible for the costs of any additional equipment. On July 6, 1993, just prior to the system's sale to Sammons, Cardinal indicated to WPTD and WPTO that a further review of the signal quality and equipment cost estimates was necessary. Nevertheless, petitioners aver that once Sammons was advised of the situation after the sale, it refused to carry the stations until such time as the system is reimbursed for the costs of additional equipment. To date, petitioners argue, neither station has been added to the Brookville system.

3. In its response, Sammons states that it has had ongoing discussions regarding the carriage of WPTD and WPTO, but the stations have never been carried on the Brookville system in the past and no equipment is located on the tower which would enable it to receive the signals. Sammons maintains that the *Clarification Order in MM Docket No. 92-259*, 8 FCC Rcd 4142 (1993), requires the broadcaster, and not the system, to bear the cost of any specialized antennas or equipment necessary for the reception of a signal. It argues that in this instance it is only asking WPTD and WPTO to pay for the cost of the antenna while Sammons states that it will buy other necessary equipment.

4. WPTD and WPTO state in reply that the *Clarification supra*, requires a broadcaster to reimburse a system for equipment only in instances where such equipment is necessary to receive a good quality signal. In this case, petitioners aver, test results have shown that both WPTD and WPTO provide a good quality signal to the Brookville headend. Therefore, they insist, they are not required to pay for the cost of an antenna.

5. We are not persuaded by Sammons' request that WPTD and WPTO be required to reimburse the system for the cost of an antenna to receive the signals. The *Reply and Order in MM Docket No. 92-259*, at paragraph 11 states that "... we generally agree ... that it is a television station's obligation to bear the costs associated with delivering a good quality signal to the system's principal headend (emphasis supplied)." Further, at paragraph 11 of the *Clarification, supra*, we state that "cable operators may not shift the costs of routine reception of broadcast signals to those stations seeking must-carry status." In the instant case, Sammons does not dispute that WPTD and WPTO provide good quality signals to its headend. The

¹ The Brookville system was operated by Cardinal Communications, Inc. up until July 22, 1993, when it was purchased by Sammons.

² A standard of -45 dBm was established for determining the availability of UHF commercial stations at a cable system's headend. Since these standards address the issue of availability

of a station's signal, consistent with Congress' guidance with respect to VHF and UHF commercial station availability, we have no reason not to utilize the same standards as *prima facie* evidence to initially determine whether a NCE station provides a cable system with a good quality signal.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater Dayton
Public Television against
TCI Cablevision of
Indiana, Inc.
Request for Carriage

CSR-3937-M
CSR-3933-M
IN0025

1993, by Greater Dayton Public Television (CSR-3937-M) IS GRANTED, in accordance with §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and TCI Cablevision of Indiana, Inc. IS ORDERED to commence carriage of WPTO on cable channel 14 forty-six (46) days from the release date of this Order. These actions are taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

MEMORANDUM OPINION AND ORDER

Adopted: November 17, 1993; Released: December 9, 1993

By the Chief, Mass Media Bureau:

1. On July 19, 1993, petitions on behalf of Greater Dayton Public Television, licensee of Television Broadcast Stations WPTO (Educ., Ch. 14), Oxford, Ohio and WPTD (Educ., Ch. 16), Dayton, Ohio, were filed with the Commission claiming that TCI Cablevision of Indiana, Inc. ("TCI"), operator of a cable television system serving Winchester, Indiana, had declined to carry the station, even though, allegedly, the Grade B contour of WPTD encompasses the system's principal headend at north latitude 40° 1' 00" and west longitude 84° 59' 31" and Oxford, the city of license of WPTO is within fifty miles of the same location. Both stations, therefore, are "local" signals within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTO and WPTD both request that the Commission not only order TCI to carry their signals, but also order that the system carry them on channels 14 and 16, respectively, the channels on which they broadcast over-the-air. No opposition to these petitions has been filed.

2. Staff review of the issues raised and of the materials submitted in WPTD's petition fails to demonstrate that TCI's headend lies within WPTD's Grade B contour.¹ Therefore, the 1992 Cable Act does not entitle WPTD to mandatory carriage on the TCI cable television system serving Winchester, Indiana, and the complaint filed July 19, 1993, by Greater Dayton Public Television (CSR-3933-M) IS DISMISSED pursuant to §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended.

3. WPTO's petition, however, establishes that it is entitled to carriage on the Winchester cable system because Oxford, Ohio, the city of license of WPTO, is within fifty miles of TCI's headend.² WPTO has requested carriage on its over-the-air broadcast channel, as it is permitted to do under §5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint filed July 19,

¹ Calculations for Grade B contours of television stations are based upon the current licensed parameters of the television station(s) in question and using the methods set forth in §73.684 of the Commission's Rules (Prediction of Coverage).

² The distance computations are based upon the reference

point(s) (for the television station's community of license) in §76.53 of the Commission's Rules and the principal headend coordinates provided in the petition and applying the method in §73.611 of the Commission's Rules (Reference Points and Distance Computation).

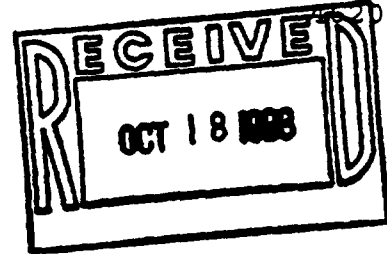
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

OCT 15 1993

IN REPLY REFER TO:

-PP



David M. Fogarty
President and General Manager
Greater Dayton Public Television
TeleCenter
110 S. Jefferson Street
Dayton, Ohio 45402-2415

In re: Greater Dayton Public Television
(WPTD)
CSR-3931-M; IN0339
CSR-3932-M; IN0011
CSR-3934-M; IN0402

Dear Mr. Fogarty:

On July 19, 1993, you filed petitions for declaratory ruling, on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTD (Educ., Ch. 16), Dayton, Ohio, claiming that TCI of Indiana, Inc. had declined to reposition WPTD on Channel 16 on its systems serving Dublin and Richmond, Indiana, and declined to carry WPTD on its system serving Lynn, Indiana. Subsequently, by letters dated September 13, 1993, you requested dismissal of these petitions as TCI has agreed to reposition and/or carry the station on all three systems.

In view of the foregoing, pursuant to §0.283 of the Commission's Rules, the petitions for declaratory ruling, filed July 19, 1993, on behalf of WPTD, are dismissed.

Sincerely,

Ronald Parver
Chief, Technical Services Branch
Cable Services Division

GD 001285

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater Dayton Public Television against TCI Cablevision of Indiana, Inc. CSR-3939-M

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: November 9, 1993; Released: December 9, 1993

By the Chief, Mass Media Bureau:

1. On July 19, 1993, Greater Dayton Public Television ("Greater Dayton"), licensee of WPTO-TV, Oxford, Ohio, filed a complaint against TCI Cablevision of Indiana, Inc. ("TCI"), pursuant to §615 of the Communications Act, 47 U.S.C. §535. Greater Dayton requests that the Commission order TCI to carry WPTO-TV on TCI's cable system serving Richmond, Indiana, and that WPTO-TV be carried on Channel 14.

2. Pursuant to §615(b) of the Communications Act of 1934, as amended, with respect to a cable system with more than 36 channels, a cable operator must carry on its cable system any qualified local noncommercial educational television station requesting carriage. 47 U.S.C. §535(b)(1).¹ A television station that is licensed by the Commission as a noncommercial educational television station and is owned and operated by a public agency, nonprofit foundation, corporation or association that is eligible to receive a community service grant from the Corporation for Public Broadcasting will be considered a qualified noncommercial educational television station. See 47 U.S.C. §535(i)(1)(A); 47 C.F.R. §76.55(a)(1). A qualified noncommercial educational television station which is licensed to a principal community whose reference point, as defined in 47 C.F.R. §76.53, is within 50 miles of the principal headend of the cable system will be considered local. See 47 U.S.C. §535(i)(2)(A); 47 C.F.R. §76.55(b)(1). Notwithstanding the above, however, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television system which does not deliver to the cable system's principal headend a signal of good quality or baseband video signal. See 47 U.S.C. §535(g)(4).

3. Greater Dayton contends that WPTO-TV is a qualified local noncommercial educational television station and therefore it has the right to carriage on TCI's Richmond, Indiana, 37-channel cable system. We agree. Greater Dayton has presented the following evidence with respect to

WPTO-TV: WPTO-TV is licensed as a noncommercial television station; it is owned by Greater Dayton, a nonprofit corporation; it is eligible to receive a community service grant from the Corporation for Public Broadcasting, and; it is licensed to Oxford, Ohio, whose reference point, according to §76.53, is within 50 miles of the principal headend of TCI's Richmond, Indiana cable system. Accordingly, WPTO-TV meets the Commission's definition of a qualified local noncommercial educational television station. In addition, Greater Dayton notes, in its correspondence with Greater Dayton, TCI has not indicated any signal quality deficiencies or copyright concerns with respect to carriage of WPTO-TV. Greater Dayton has submitted two letters, dated May 19, 1993, and June 17, 1993, which it sent to TCI requesting carriage on Channel 14. Greater Dayton also submitted a June 1, 1993 letter from TCI containing TCI's channel lineup for its cable system, which lineup does not include WPTO-TV.

4. According to §615(g)(5), a qualified local noncommercial educational station carried pursuant to must-carry requirements must appear on the cable system channel number on which it is broadcast over-the-air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel as is mutually agreed upon by the station and the cable operator. 47 U.S.C. §535(g)(5); 47 C.F.R. §76.57(h). Because Greater Dayton has elected that WPTO-TV be carried on its over-the-air channel, Channel 14, we will grant its request that the Commission order TCI to carry WPTO-TV on Channel 14.

5. In view of the above, the complaint filed on July 19, 1993 by Greater Dayton Public Television, licensee of WPTO-TV, Oxford, Ohio (CSR-3939-M) IS GRANTED, in accordance with §615(j)(3) of the Communications Act of 1934, as amended, (47 U.S.C. §535). Furthermore, TCI Cablevision of Indiana, Inc. IS ORDERED to commence carriage of WPTO-TV on Channel 14 within forty-six (46) days from the release date of this Order on its system serving Richmond, Indiana. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's rules, 47 C.F.R. §0.283.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

¹ A cable system with more than 36 channels which is required to carry the signals of three qualified local noncommercial educational television stations is not required, however, to carry the signals of additional such stations the programming of which substantially duplicates the program-

ming broadcast by another qualified local noncommercial educational television station requesting carriage. See 47 U.S.C. §535(e). See 47 C.F.R. §76.56(a)(1) for the definition of substantial duplication.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater Dayton Public Television against TCI Cablevision of Indiana, Inc. CSR-3938-M

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: December 8, 1993; Released: January 25, 1994

By the Chief, Mass Media Bureau:

1. On July 19, 1993, Greater Dayton Public Television ("Greater Dayton"), licensee of WPTO-TV, Oxford, Ohio, filed a complaint against TCI Cablevision of Indiana, Inc. ("TCI"), pursuant to Section 615 of the Communications Act, 47 U.S.C. § 535. Greater Dayton requests that the Commission order TCI to carry WPTO-TV on TCI's cable system serving Dublin, Indiana, and that WPTO-TV be carried on Channel 14.

2. Pursuant to Section 615(b) of the Communications Act of 1934, as amended, with respect to a cable system with more than 36 channels, a cable operator must carry on its cable system any qualified local noncommercial educational television station requesting carriage. 47 U.S.C. § 535(b)(1).¹ A television station that is licensed by the Commission as a noncommercial educational television station and is owned and operated by a public agency, nonprofit foundation, corporation or association that is eligible to receive a community service grant from the Corporation for Public Broadcasting will be considered a qualified noncommercial educational television station. See 47 U.S.C. § 535(l)(1)(A); 47 C.F.R. § 76.55(a)(1). A qualified noncommercial educational television station which is licensed to a principal community whose reference point, as defined in 47 C.F.R. § 76.53, is within 50 miles of the principal headend of the cable system will be considered local. See 47 U.S.C. § 535(l)(2)(A); 47 C.F.R. § 76.55(b)(1). Notwithstanding the above, however, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television system which does not deliver to the cable system's principal headend a signal of good quality or baseband video signal. See 47 U.S.C. § 535(g)(4).

3. Greater Dayton contends that WPTO-TV is a qualified local noncommercial educational television station and therefore it has the right to carriage on TCI's Dublin, Indiana, 37-channel cable system. We agree. Greater Dayton has presented the following evidence with respect to WPTO-TV: WPTO-TV is licensed as a noncommercial tele-

vision station; it is owned by Greater Dayton, a nonprofit corporation; it is eligible to receive a community service grant from the Corporation for Public Broadcasting, and; it is licensed to Oxford, Ohio, whose reference point, according to Section 76.53, is within 50 miles of the principal headend of TCI's Dublin, Indiana cable system. Accordingly, WPTO-TV meets the Commission's definition of a qualified local noncommercial educational television station. In addition, Greater Dayton notes, in its correspondence with Greater Dayton, TCI has not indicated any signal quality deficiencies or copyright concerns with respect to carriage of WPTO-TV. Greater Dayton has submitted two letters, dated May 19, 1993, and June 17, 1993, which it sent to TCI requesting carriage on Channel 14. Greater Dayton also submitted a June 1, 1993 letter from TCI containing TCI's channel lineup for its cable system, which lineup does not include WPTO-TV.

4. According to Section 615(g)(5), a qualified local noncommercial educational station carried pursuant to must-carry requirements must appear on the cable system channel number on which it is broadcast over-the-air, or on the channel on which it was carried on July 19, 1965, at the election of the station, or on such other channel as is mutually agreed upon by the station and the cable operator. 47 U.S.C. § 535(g)(5); 47 C.F.R. § 76.57(b). Because Greater Dayton has elected that WPTO-TV be carried on its over-the-air channel, Channel 14, we will grant its request that the Commission order TCI to carry WPTO-TV on Channel 14.

5. In view of the above, the complaint filed on July 19, 1993 by Greater Dayton Public Television, licensee of WPTO-TV, Oxford, Ohio (CSR-3938-M) IS GRANTED, in accordance with Section 615(j)(3) of the Communications Act of 1934, as amended, (47 U.S.C. § 535). Furthermore, TCI Cablevision of Indiana, Inc. IS ORDERED to commence carriage of WPTO-TV on Channel 14 within forty-five (45) days from the release date of this Order on its system serving Dublin, Indiana. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by § 0.283 of the Commission's rules, 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

¹ A cable system with more than 36 channels is required to carry a minimum of three qualified local noncommercial educational television stations. A cable system is not required, however, to carry the signals of additional educational stations if

they substantially duplicate the programming broadcast by another qualified local noncommercial educational television station already being carried. See 47 U.S.C. § 535(e). See 47 C.F.R. § 76.56(a)(1) for the definition of substantial duplication.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater Dayton
Public Television against
TCI Cablevision of
Indiana, Inc.
Request for Carriage

CSR-3937-M
CSR-3933-M
IN0025

1993, by Greater Dayton Public Television (CSR-3937-M) IS GRANTED, in accordance with §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and TCI Cablevision of Indiana, Inc. IS ORDERED to commence carriage of WPTO on cable channel 14 forty-six (46) days from the release date of this Order. These actions are taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

MEMORANDUM OPINION AND ORDER

Adopted: November 17, 1993; Released: December 9, 1993

By the Chief, Mass Media Bureau:

1. On July 19, 1993, petitions on behalf of Greater Dayton Public Television, licensee of Television Broadcast Stations WPTO (Educ., Ch. 14), Oxford, Ohio and WPTD (Educ., Ch. 16), Dayton, Ohio, were filed with the Commission claiming that TCI Cablevision of Indiana, Inc. ("TCI"), operator of a cable television system serving Winchester, Indiana, had declined to carry the station, even though, allegedly, the Grade B contour of WPTD encompasses the system's principal headend at north latitude 40° 1' 00" and west longitude 84° 59' 31" and Oxford, the city of license of WPTO is within fifty miles of the same location. Both stations, therefore, are "local" signals within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTO and WPTD both request that the Commission not only order TCI to carry their signals, but also order that the system carry them on channels 14 and 16, respectively, the channels on which they broadcast over-the-air. No opposition to these petitions has been filed.

2. Staff review of the issues raised and of the materials submitted in WPTD's petition fails to demonstrate that TCI's headend lies within WPTD's Grade B contour.¹ Therefore, the 1992 Cable Act does not entitle WPTD to mandatory carriage on the TCI cable television system serving Winchester, Indiana, and the complaint filed July 19, 1993, by Greater Dayton Public Television (CSR-3933-M) IS DISMISSED pursuant to §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended.

3. WPTO's petition, however, establishes that it is entitled to carriage on the Winchester cable system because Oxford, Ohio, the city of license of WPTO, is within fifty miles of TCI's headend.² WPTO has requested carriage on its over-the-air broadcast channel, as it is permitted to do under §5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint filed July 19,

¹ Calculations for Grade B contours of television stations are based upon the current licensed parameters of the television stations(s) in question and using the methods set forth in §3.684 of the Commission's Rules (Prediction of Coverage).

² The distance computations are based upon the reference

point(s) (for the television station's community of license) in §76.53 of the Commission's Rules and the principal headend coordinates provided in the petition and applying the methods in §73.611 of the Commission's Rules (Reference Points and Distance Computation).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater Dayton
Public Television against
TCI Cablevision of Indiana, Inc.

CSR-3935-M
IN0402

Request for Carriage



MEMORANDUM OPINION AND ORDER

Adopted: November 9, 1993; Released: November 24, 1993

By the Chief, Mass Media Bureau:

1. On July 19, 1993, a petition on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTO (Educ., Ch. 14), Oxford, Ohio, was filed with the Commission claiming that TCI Cablevision of Indiana, Inc. ("TCI"), operator of a cable television system serving Lynn, Indiana, had declined to carry the station, even though Oxford, the city of license of WPTO, is within fifty miles of the principal headend of TCI's system located at north latitude 40°02'42" and west longitude 84°56'11" and WPTO, therefore, is a "local" signal within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTO requests that the Commission not only order TCI to carry its signal, but also order that the system carry it on channel 14, the channel on which it broadcasts over-the-air. No opposition to this petition has been filed.¹

2. WPTO's petition establishes that it is entitled to carriage on the Lynn cable system, and it has requested carriage on its over-the-air broadcast channel, as it is permitted to do under Section 5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint filed July 19, 1993, by Greater Dayton Public Television IS GRANTED, in accordance with Section 615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and TCI Cablevision of Indiana, Inc. IS ORDERED to commence carriage of WPTO on cable channel 14 forty-six (46) days from the release date of this Order. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

GD 001182

¹ In a notification to WPTO, TCI indicates possible copyright and signal quality concerns, but gives no specifics. WPTO states, however, that it provided TCI with a written copyright indemn-

nity agreement and advised the system that it agreed to provide the requisite "good quality signal".

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20534

Roy J. Stewart
Chief, Mass Media Bureau

In re:

Complaint of Greater Dayton
Public Television against
TCI Cablevision of Indiana, Inc. CSR-3936-M
IN0067

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: October 20, 1993; Released: November 9, 1993

By the Chief, Mass Media Bureau:

1. On July 19, 1993, a petition on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTO (Educ., Ch. 14), Oxford, Ohio, was filed with the Commission claiming that TCI Cablevision of Indiana, Inc. ("TCI"), operator of a cable television system serving New Castle, Indiana, had declined to carry the station, even though Oxford is within fifty miles of the system's principal headend at north latitude 39° 56' 49" and west longitude 85° 21' 16" and the station is therefore a "local" signal within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTO requests that the Commission not only order TCI to carry its signal, but also order that the system carry it on channel 14, the channel on which it broadcasts over-the-air. No opposition to this petition has been filed.¹

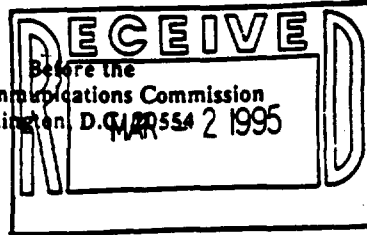
2. WPTO's petition establishes that it is entitled to carriage on the New Castle cable system, and it has requested carriage on its over-the-air broadcast channel, as it is permitted to do under Section 5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint filed July 19, 1993, by Greater Dayton Public Television IS GRANTED, in accordance with §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and TCI Cablevision of Indiana, Inc. IS ORDERED to commence carriage of WPTO on cable channel 14 forty-six (46) days from the release date of this Order. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

GD 001275

¹ On April 4, 1993, the United States District Court of the District of Columbia issued a decision in the litigation involving Turner Broadcasting System, Inc., et al., v. Federal Communications Commission, Civil Action No. 92-2247 (D.D.C. April 4,

1993), which upheld the provisions of the 1992 Cable Act had been challenged as violating plaintiffs' constitutional rights and terminated the 120 day Standstill Order previously issued in this case.

Before the
Federal Communications Commission
Washington, D.C. 20554
MAR 2 1995



In re:

Complaint of Greater Dayton
Public Television against
TCI Cablevision of Ohio

Request for Carriage and
Channel Positioning

CSR-4168-M
CSR-4169-M
CSR-4170-M
CSR-4171-M
CSR-4172-M

MEMORANDUM OPINION AND ORDER

Adopted: January 19, 1995; Released: February 1, 1995

By the Cable Services Bureau:

INTRODUCTION

1. On October 5, 1992, the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act) became law.¹ On December 4, 1992 the 1992 Cable Act's requirements for mandatory carriage of noncommercial educational (NCE) stations set forth in Section 5 of the 1992 Act became effective.² On December 10, 1993 Greater Dayton Public Television (GDPT), licensee of station WPTO (Educ., Channel 14), Oxford, Ohio filed five complaints seeking to ensure WPTO's carriage on channel 14 of TCI Cablevision of Ohio, Inc.'s (TCI) system serving Golf Manor, Middletown, Wilmington, Fairfield, and Hamilton.³ On January 11, 1994, TCI filed a consolidated opposition to these complaints. GDPT filed a reply to this opposition on February 14, 1994.

SUMMARY OF PLEADINGS

2. WPTO maintains that, despite its status as a qualified, local NCE broadcast station,⁴ TCI refuses to honor WPTO's channel-election. Pursuant to the Commission's must-carry rules, a qualified NCE is entitled to carriage on the cable operator's system and may choose a channel position based on either its on-air channel or the channel on which it was carried as of July 19, 1985.⁵ WPTO has elected its on-air channel, channel 14, as its channel position on respondent's systems.

3. TCI does not dispute that WPTO is a qualified NCE entitled to carriage on its systems, nor does respondent dispute that, ordinarily, WPTO would be entitled to elect a channel based on its on-air channel. However, respondent contends that to locate WPTO on channel 14 would require TCI to switch one of its pay services to another channel. To effectuate complainant's request would also, according to TCI, require the removal and retrapping of positive and negative traps of almost 27,000 subscribers. The estimated cost of this effort is \$307,000. TCI acknowledges that the Commission has stated that "inconvenience, marketing problems, the need to reconfigure the basic tier or the need to employ additional traps or make technical changes" are not enough to bar fulfillment of an operator's must-carry obligations,⁶ nonetheless, TCI believes that to require compliance in this instance is well-beyond what the Commission envisioned and thus WPTO's request should be denied.

4. TCI states that it offered to carry WPTO on channel 15 and that "it makes no sense to spend over \$300,000 to move WPTO a mere one channel down the television dial."⁷ Respondent states that complainant also refused its offer to educate viewers about an alternative channel position, and that WPTO has failed to explain why placement on channel 15 or channel 4 (which TCI allegedly offered as a second alternative) is significantly different than channel 14.⁸

5. TCI concludes by requesting that, if WPTO's complaint is granted, respondent be given twelve (12) weeks beyond the standard 45 days in which to comply.⁹ TCI bases this request on its estimates regarding the number of traps that can be produced per week and the installation time. WPTO requests that the Commission reject this extension of time.

¹ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

² 47 U.S.C. § 535. Compare with *Turner Broadcasting System, Inc. v. Federal Communications Commission*, 114 S. Ct. 2445 (1994). In remanding the case, the Court determined that issues of material fact must be resolved by the lower court. Specifically, the Court indicated that the government must show that the must-carry provisions are necessary to alleviate the alleged harms and that they do not burden substantially more speech than necessary to further such protection. *Id.* at 2451.

³ All these communities are located in Ohio.

⁴ 47 C.F.R. § 76.55(a), (b); § 76.56(a).

⁵ 47 C.F.R. § 76.57(b).

⁶ *Report and Order in MM Docket No. 92-259*, 8 FCC Red 2965, 2988 para. 91 (1993).

⁷ Consolidated Opposition to Channel Positioning Complaints, p. 4.

⁸ TCI considers WPTO's channel request unreasonable given that complainant "has failed to adequately explain why it believes placement on channel 4 [another channel option] or on

channel 15 will cause great harm or provide 'inadequate visibility' for the station... In any event, WPTO's concerns are vastly overstated...[and] since carriage of WPTO began only this summer, the Station has no historical linkage to cable channel 14. Moreover, as already explained, TCI has offered to work with WPTO in developing a promotional package which would educate subscribers about WPTO's cable channel position." Consolidated Opposition To Channel Positioning Complaints, p. 5. WPTO contends that it never "volunteered an alternative placement on cable channel 4...[and that] all urban cable operators in the Dayton and Cincinnati markets have agreed to and carry WPTO on channel 14". Consolidated Reply to Consolidated Opposition to Channel Positioning Complaints, p. 3. Thus, to place WPTO on a channel other than channel 14--"without appropriate promotional support"--would cause further harm to WPTO. *Id.* at 5. WPTO considers TCI's offer of promotional support to be minimal. *Id.* at 2.

⁹ 47 C.F.R. § 76.61(b)(2).

DISCUSSION

6. We find that TCI is required to carry WPTO on channel 14. Section 615(g)(5) of the 1992 Cable Act permits a NCE to elect its over-the-air channel number as its channel position on a cable system,¹⁰ and WPTO has properly chosen its over-the-air channel. There is no requirement in the Act or our rules that a broadcaster explain why the operator's on-channel preference is less suitable than the broadcaster's statutorily-based channel election. Further, cable operators must comply with the channel positioning requirements absent a compelling technical reason.¹¹ The Commission specifically held that the need to replace traps, or to reconfigure the basic tier, or to make technological changes are generally not grounds for waiver. Nevertheless, in adopting the on-channel carriage rules, the Commission recognized that there well might be certain circumstances where the compliance costs incurred by a cable operator would be so compelling as to warrant a waiver. To obtain such a waiver, a petitioner must first submit detailed evidence demonstrating the compliance costs. The petitioner must then demonstrate how such costs would substantially impact the cable system. TCI has failed to make these necessary showing.

7. Accordingly, the petition filed on December 8, 1993, by Greater Dayton Public Television IS GRANTED, in accordance with Section 615(g)(5) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and TCI Cablevision of Ohio, Inc. IS ORDERED to commence carriage of WPTO on cable channel 14 in accordance with the above decision twelve weeks (12) from the release date of this Order.

8. This action is taken authority delegated by Section 0.321 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

GD 001146

¹⁰ *Supra* note 5.

¹¹ *Supra* note 6.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater Dayton Public
Television against Oak Cable Systems

CSR-3940-M

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: November 9, 1993; Released: December 9, 1993

By the Chief, Mass Media Bureau:

1. On July 19, 1993, Greater Dayton Public Television ("Greater Dayton"), licensee of WPTO-TV, Oxford, Ohio, filed a complaint against Oak Cable Systems ("Oak Cable"), pursuant to §615 of the Communications Act, 47 U.S.C. §535. Greater Dayton requests that the Commission order Oak Cable to carry WPTO-TV on Oak Cable's cable system serving St. Paul (Decatur County), Indiana, and that WPTO-TV be carried on Channel 14.

2. Section 615 of the Communications Act of 1934, as amended, requires a cable system to carry the signals of qualified local noncommercial educational television stations. See 47 U.S.C. §535. A television station that is licensed by the Commission as a noncommercial educational television station and is owned and operated by a public agency, nonprofit foundation, corporation or association that is eligible to receive a community service grant from the Corporation for Public Broadcasting will be considered a qualified noncommercial educational television station. See 47 U.S.C. §535(l)(1)(A); 47 C.F.R. §76.55(a)(1). A qualified noncommercial educational television station which is licensed to a principal community whose reference point, as defined in 47 C.F.R. §76.53, is within 50 miles of the principal headend of the cable system will be considered local. See 47 U.S.C. §535(l)(2)(A); 47 C.F.R. §76.55(b)(1). Notwithstanding the above, however, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television system which does not deliver to the cable system's principal headend a signal of good quality or baseband video signal. See 47 U.S.C. §535(g)(4).

3. Greater Dayton contends that WPTO-TV is a qualified local noncommercial educational television station and therefore it has the right to carriage on Oak Cable's St. Paul, Indiana, cable system. We agree. Greater Dayton has presented the following evidence with respect to WPTO-TV: WPTO-TV is licensed as a noncommercial television station; it is owned by Greater Dayton, a nonprofit corporation; it is eligible to receive a community service grant from the Corporation for Public Broadcasting, and; it is licensed to Oxford, Ohio, whose reference point, according to §76.53, is within 50 miles of the principal headend of Oak Cable's St. Paul, Indiana cable system. Accordingly, WPTO-TV meets the Commission's definition of a qualified local noncommercial educational television station. Greater

Dayton has submitted a May 28, 1993 letter which it sent to Oak Cable requesting carriage on Channel 14. According to Greater Dayton, Oak Cable has neither commenced carriage nor responded in any way to Greater Dayton's request for carriage, nor has Oak Cable submitted to Greater Dayton its channel lineup for the St. Paul system.

4. According to §615(g)(5), a qualified local noncommercial educational station carried pursuant to must-carry requirements must appear on the cable system channel number on which it is broadcast over-the-air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel as is mutually agreed upon by the station and the cable operator. 47 U.S.C. §535(g)(5); 47 C.F.R. §76.57(b). Because Greater Dayton has elected that WPTO-TV be carried on its over-the-air channel, Channel 14, we will grant its request that the Commission order Oak Cable to carry WPTO-TV on Channel 14.

5. In view of the above, the complaint filed on July 19, 1993 by Greater Dayton Public Television, licensee of WPTO-TV, Oxford, Ohio (CSR-3940-M) IS GRANTED, in accordance with §615(j)(3) of the Communications Act of 1934, as amended, (47 U.S.C. §535). Furthermore, Oak Cable Systems IS ORDERED to commence carriage of WPTO-TV on Channel 14 within forty-six (46) days from the release date of this Order on its system serving St. Paul, Indiana. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's rules, 47 C.F.R. §0.283.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater Dayton
Public Television against
Oak Cable Systems

CSR-3941-M

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: November 9, 1993; Released: December 9, 1993

By the Chief, Mass Media Bureau:

1. On July 19, 1993, Greater Dayton Public Television ("Greater Dayton"), licensee of WPTO-TV, Oxford, Ohio, filed a complaint against Oak Cable Systems ("Oak Cable"), pursuant to §615 of the Communications Act, 47 U.S.C. §535. Greater Dayton requests that the Commission order Oak Cable to carry WPTO-TV on Oak Cable's cable system serving Waldron, Indiana, and that WPTO-TV be carried on Channel 14.

2. Section 615 of the Communications Act of 1934, as amended, requires a cable system to carry the signals of qualified local noncommercial educational television stations. See 47 U.S.C. §535. A television station that is licensed by the Commission as a noncommercial educational television station and is owned and operated by a public agency, nonprofit foundation, corporation or association that is eligible to receive a community service grant from the Corporation for Public Broadcasting will be considered a qualified noncommercial educational television station. See 47 U.S.C. §535(l)(1)(A); 47 C.F.R. §76.55(a)(1). A qualified noncommercial educational television station which is licensed to a principal community whose reference point, as defined in 47 C.F.R. §76.53, is within 50 miles of the principal headend of the cable system will be considered local. See 47 U.S.C. §535(l)(2)(A); 47 C.F.R. §76.55(b)(1). Notwithstanding the above, however, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television system which does not deliver to the cable system's principal headend a signal of good quality or baseband video signal. See 47 U.S.C. §535(g)(4).

3. Greater Dayton contends that WPTO-TV is a qualified local noncommercial educational television station and therefore it has the right to carriage on Oak Cable's Waldron, Indiana, cable system. We agree. Greater Dayton has presented the following evidence with respect to WPTO-TV: WPTO-TV is licensed as a noncommercial television station; it is owned by Greater Dayton, a nonprofit corporation; it is eligible to receive a community service grant from the Corporation for Public Broadcasting, and; it is licensed to Oxford, Ohio, whose reference point, according to §76.53, is within 50 miles of the principal headend of Oak Cable's Waldron, Indiana cable system, located in St. Paul, Indiana. Accordingly, WPTO-TV meets the Com-

mission's definition of a qualified local noncommercial educational television station. Greater Dayton has submitted a May 28, 1993 letter which it sent to Oak Cable requesting carriage on Channel 14. According to Greater Dayton, Oak Cable has neither commenced carriage nor responded in any way to Greater Dayton's request for carriage, nor has Oak Cable submitted to Greater Dayton its channel lineup for the Waldron system.

4. According to §615(g)(5), a qualified local noncommercial educational station carried pursuant to must-carry requirements must appear on the cable system channel number on which it is broadcast over-the-air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel as is mutually agreed upon by the station and the cable operator. 47 U.S.C. §535(g)(5); 47 C.F.R. §76.57(b). Because Greater Dayton has elected that WPTO-TV be carried on its over-the-air channel, Channel 14, we will grant its request that the Commission order Oak Cable to carry WPTO-TV on Channel 14.

5. In view of the above, the complaint filed on July 19, 1993 by Greater Dayton Public Television, licensee of WPTO-TV, Oxford, Ohio (CSR-3941-M) IS GRANTED, in accordance with §615(j)(3) of the Communications Act of 1934, as amended, (47 U.S.C. §535). Furthermore, Oak Cable Systems IS ORDERED to commence carriage of WPTO-TV on Channel 14 within forty-six (46) days from the release date of this Order on its system serving Waldron, Indiana. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's rules, 47 C.F.R. §0.283.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater
Dayton Public Television
against Country Cable
Systems

CSR-3943-M

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: November 9, 1993; Released: December 14, 1993

By the Chief, Mass Media Bureau:

1. On July 19, 1993, Greater Dayton Public Television ("Greater Dayton"), licensee of WPTO-TV, Oxford, Ohio, filed a complaint against Country Cable Systems ("Country Cable"), pursuant to §615 of the Communications Act, 47 U.S.C. §535. Greater Dayton requests that the Commission order Country Cable to carry WPTO-TV on Country Cable's cable system serving Glenwood, Indiana, and that WPTO-TV be carried on Channel 14.

2. Section 615 of the Communications Act of 1934, as amended, requires a cable system to carry the signals of qualified local noncommercial educational television stations. See 47 U.S.C. §535. A television station that is licensed by the Commission as a noncommercial educational television station and is owned and operated by a public agency, nonprofit foundation, corporation or association that is eligible to receive a community service grant from the Corporation for Public Broadcasting will be considered a qualified noncommercial educational television station. See 47 U.S.C. §535(l)(1)(A); 47 C.F.R. §76.55(a)(1). A qualified noncommercial educational television station, which is licensed to a principal community whose reference point, as defined in 47 C.F.R. §76.53, is within 50 miles of the principal headend of the cable system will be considered local. See 47 U.S.C. §535(l)(2)(A); 47 C.F.R. §76.55(b)(1). Notwithstanding the above, however, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television system which does not deliver to the cable system's principal headend a signal of good quality or baseband video signal. See 47 U.S.C. §535(g)(4).

3. Greater Dayton contends that WPTO-TV is a qualified local noncommercial educational television station and therefore it has the right to carriage on Country Cable's Glenwood, Indiana, cable system. We agree. Greater Dayton has presented the following evidence with respect to WPTO-TV: WPTO-TV is licensed as a noncommercial television station; it is owned by Greater Dayton, a nonprofit corporation; it is eligible to receive a community service grant from the Corporation for Public Broadcasting, and; it is licensed to Oxford, Ohio, whose reference point, according to §76.53, is within 50 miles of the principal headend of Country Cable's Glenwood, Indiana cable system. Accordingly, WPTO-TV meets the Commission's definition of

a qualified local noncommercial educational television station. Greater Dayton has submitted a May 26, 1993 letter which it sent to Country Cable requesting carriage on Channel 14. According to Greater Dayton, Country Cable has neither commenced carriage nor responded in any way to Greater Dayton's request for carriage, nor has Country Cable submitted to Greater Dayton its channel lineup for the Glenwood system.

4. According to §615(g)(5), a qualified local noncommercial educational station carried pursuant to must-carry requirements must appear on the cable system channel number on which it is broadcast over-the-air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel as is mutually agreed upon by the station and the cable operator. 47 U.S.C. §535(g)(5); 47 C.F.R. §76.57(b). Because Greater Dayton has elected that WPTO-TV be carried on its over-the-air channel, Channel 14, we will grant its request that the Commission order Country Cable to carry WPTO-TV on Channel 14.

5. In view of the above, the complaint filed on July 19, 1993 by Greater Dayton Public Television, licensee of WPTO-TV, Oxford, Ohio (CSR-3943-M) IS GRANTED, in accordance with §615(j)(3) of the Communications Act of 1934, as amended, (47 U.S.C. § 535). Furthermore, Country Cable Systems IS ORDERED to commence carriage of WPTO-TV on Channel 14 within forty-six (46) days from the release date of this Order on its system serving Glenwood, Indiana. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's rules, 47 C.F.R. §0.283.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater Dayton
Public Television against
Country Cable Systems

CSR-3942-M

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: November 9, 1993; Released: December 14, 1993

By the Chief, Mass Media Bureau:

1. On July 19, 1993, Greater Dayton Public Television ("Greater Dayton"), licensee of WPTO-TV, Oxford, Ohio, filed a complaint against Country Cable Systems ("Country Cable"), pursuant to §615 of the Communications Act, 47 U.S.C. §535. Greater Dayton requests that the Commission order Country Cable to carry WPTO-TV on Country Cable's cable system serving Holton (Ripley County), Indiana, and that WPTO-TV be carried on Channel 14.

2. Section 615 of the Communications Act of 1934, as amended, requires a cable system to carry the signals of qualified local noncommercial educational television stations. See 47 U.S.C. §535. A television station that is licensed by the Commission as a noncommercial educational television station and is owned and operated by a public agency, nonprofit foundation, corporation or association that is eligible to receive a community service grant from the Corporation for Public Broadcasting will be considered a qualified noncommercial educational television station. See 47 U.S.C. §535(1)(1)(A); 47 C.F.R. §76.55(a)(1). A qualified noncommercial educational television station which is licensed to a principal community whose reference point, as defined in 47 C.F.R. §76.53, is within 50 miles of the principal headend of the cable system will be considered local. See 47 U.S.C. §535(1)(2)(A); 47 C.F.R. §76.55(b)(1). Notwithstanding the above, however, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television system which does not deliver to the cable system's principal headend a signal of good quality or baseband video signal. See 47 U.S.C. §535(g)(4).

3. Greater Dayton contends that WPTO-TV is a qualified local noncommercial educational television station and therefore it has the right to carriage on Country Cable's Holton, Indiana, cable system. We agree. Greater Dayton has presented the following evidence with respect to WPTO-TV: WPTO-TV is licensed as a noncommercial television station; it is owned by Greater Dayton, a nonprofit corporation; it is eligible to receive a community service grant from the Corporation for Public Broadcasting, and; it is licensed to Oxford, Ohio, whose reference point, according to §76.53, is within 50 miles of the principal headend of Country Cable's Holton, Indiana cable system. Accordingly, WPTO-TV meets the Commission's definition of a

qualified local noncommercial educational television station. Greater Dayton has submitted a May 26, 1993 letter which it sent to Country Cable requesting carriage on Channel 14. According to Greater Dayton, Country Cable has neither commenced carriage nor responded in any way to Greater Dayton's request for carriage, nor has Country Cable submitted to Greater Dayton its channel lineup for the Holton system.

4. According to §615(g)(5), a qualified local noncommercial educational station carried pursuant to must-carry requirements must appear on the cable system channel number on which it is broadcast over-the-air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel as is mutually agreed upon by the station and the cable operator. 47 U.S.C. §535(g)(5); 47 C.F.R. §76.57(b). Because Greater Dayton has elected that WPTO-TV be carried on its over-the-air channel, Channel 14, we will grant its request that the Commission order Country Cable to carry WPTO-TV on Channel 14.

5. In view of the above, the complaint filed on July 19, 1993 by Greater Dayton Public Television, licensee of WPTO-TV, Oxford, Ohio (CSR-3942-M) IS GRANTED, in accordance with §615(j)(3) of the Communications Act of 1934, as amended, (47 U.S.C. § 535). Furthermore, Country Cable Systems IS ORDERED to commence carriage of WPTO-TV on Channel 14 within forty-six (46) days from the release date of this Order on its system serving Holton, Indiana. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's rules, 47 C.F.R. §0.283.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater Dayton
Public Television against
Country Cable Systems

CSR-3945-M

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: November 9, 1993; Released: December 14, 1993

By the Chief, Mass Media Bureau:

1. On July 19, 1993, Greater Dayton Public Television ("Greater Dayton"), licensee of WPTD-TV, Dayton, Ohio, filed a complaint against Country Cable Systems ("Country Cable"), pursuant to §615 of the Communications Act, 47 U.S.C. § 535. Greater Dayton requests that the Commission order Country Cable to carry WPTD-TV on Country Cable's cable system serving Greens Fork, Indiana, and that WPTD-TV be carried on Channel 16.

2. Section 615 of the Communications Act of 1934, as amended, requires a cable system to carry the signals of qualified local noncommercial educational television stations. See 47 U.S.C. §535. A television station that is licensed by the Commission as a noncommercial educational television station and is owned and operated by a public agency, nonprofit foundation, corporation or association that is eligible to receive a community service grant from the Corporation for Public Broadcasting will be considered a qualified noncommercial educational television station. See 47 U.S.C. §535(l)(1)(A); 47 C.F.R. §76.55(a)(1). A qualified noncommercial educational television station which is licensed to a principal community whose reference point, as defined in 47 C.F.R. §76.53, is within 50 miles of the principal headend of the cable system will be considered local. See 47 U.S.C. §535(l)(2)(A); 47 C.F.R. §76.55(b)(1). Notwithstanding the above, however, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television system which does not deliver to the cable system's principal headend a signal of good quality or baseband video signal. See 47 U.S.C. §535(g)(4).

3. Greater Dayton contends that WPTD-TV is a qualified local noncommercial educational television station and therefore it has the right to carriage on Country Cable's Greens Fork, Indiana, cable system. We agree. Greater Dayton has presented the following evidence with respect to WPTD-TV: WPTD-TV is licensed as a noncommercial television station; it is owned by Greater Dayton, a nonprofit corporation; it is eligible to receive a community service grant from the Corporation for Public Broadcasting, and; it is licensed to Dayton, Ohio, whose reference point, according to §76.53, is within 50 miles of the principal headend of Country Cable's Greens Fork, Indiana cable system. Accordingly, WPTD-TV meets the Commission's definition of a qualified local noncommercial educational

television station. Greater Dayton has submitted a May 26, 1993 letter which it sent to Country Cable requesting carriage on Channel 16. According to Greater Dayton, Country Cable has neither commenced carriage nor responded in any way to Greater Dayton's request for carriage, nor has Country Cable submitted to Greater Dayton its channel lineup for the Greens Fork system.

4. According to §615(g)(5), a qualified local noncommercial educational station carried pursuant to must-carry requirements must appear on the cable system channel number on which it is broadcast over-the-air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel as is mutually agreed upon by the station and the cable operator. 47 U.S.C. §535(g)(5); 47 C.F.R. §76.57(b). Because Greater Dayton has elected that WPTD-TV be carried on its over-the-air channel, Channel 16, we will grant its request that the Commission order Country Cable to carry WPTD-TV on Channel 16.

5. In view of the above, the complaint filed on July 19, 1993 by Greater Dayton Public Television, licensee of WPTD-TV, Dayton, Ohio (CSR-3945-M) IS GRANTED, in accordance with §615(j)(3) of the Communications Act of 1934, as amended, (47 U.S.C. §535). Furthermore, Country Cable Systems IS ORDERED to commence carriage of WPTD-TV on Channel 16 within forty-six (46) days from the release date of this Order on its system serving Greens Fork, Indiana. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's rules, 47 C.F.R. §0.283.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater Dayton
Public Television against
Country Cable Systems

CSR-3944-M

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: November 9, 1993; Released: December 14, 1993

By the Chief, Mass Media Bureau:

1. On July 19, 1993, Greater Dayton Public Television ("Greater Dayton"), licensee of WPTO-TV, Oxford, Ohio, filed a complaint against Country Cable Systems ("Country Cable"), pursuant to Section 615 of the Communications Act, 47 U.S.C. §535. Greater Dayton requests that the Commission order Country Cable to carry WPTO-TV on Country Cable's cable system serving Greens Fork, Indiana, and that WPTO-TV be carried on Channel 14.

2. Section 615 of the Communications Act of 1934, as amended, requires a cable system to carry the signals of qualified local noncommercial educational television stations. See 47 U.S.C. §535. A television station that is licensed by the Commission as a noncommercial educational television station and is owned and operated by a public agency, nonprofit foundation, corporation or association that is eligible to receive a community service grant from the Corporation for Public Broadcasting will be considered a qualified noncommercial educational television station. See 47 U.S.C. §535(l)(1)(A); 47 C.F.R. §76.55(a)(1). A qualified noncommercial educational television station which is licensed to a principal community whose reference point, as defined in 47 C.F.R. §76.53, is within 50 miles of the principal headend of the cable system will be considered local. See 47 U.S.C. §535(l)(2)(A); 47 C.F.R. §76.55(b)(1). Notwithstanding the above, however, a cable operator shall not be required to carry the signal of any qualified local noncommercial educational television system which does not deliver to the cable system's principal headend a signal of good quality or baseband video signal. See 47 U.S.C. §535(g)(4).

3. Greater Dayton contends that WPTO-TV is a qualified local noncommercial educational television station and therefore it has the right to carriage on Country Cable's Greens Fork, Indiana, cable system. We agree. Greater Dayton has presented the following evidence with respect to WPTO-TV: WPTO-TV is licensed as a noncommercial television station; it is owned by Greater Dayton, a nonprofit corporation; it is eligible to receive a community service grant from the Corporation for Public Broadcasting, and; it is licensed to Oxford, Ohio, whose reference point, according to §76.53, is within 50 miles of the principal headend of Country Cable's Greens Fork, Indiana cable system. Accordingly, WPTO-TV meets the Commission's

definition of a qualified local noncommercial educational television station. Greater Dayton has submitted a May 26, 1993 letter which it sent to Country Cable requesting carriage on Channel 14. According to Greater Dayton, Country Cable has neither commenced carriage nor responded in any way to Greater Dayton's request for carriage, nor has Country Cable submitted to Greater Dayton its channel lineup for the Greens Fork system.

4. According to §615(g)(5), a qualified local noncommercial educational station carried pursuant to must-carry requirements must appear on the cable system channel number on which it is broadcast over-the-air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel as is mutually agreed upon by the station and the cable operator. 47 U.S.C. §535(g)(5); 47 C.F.R. §76.57(b). Because Greater Dayton has elected that WPTO-TV be carried on its over-the-air channel, Channel 14, we will grant its request that the Commission order Country Cable to carry WPTO-TV on Channel 14.

5. In view of the above, the complaint filed on July 19, 1993 by Greater Dayton Public Television, licensee of WPTO-TV, Oxford, Ohio (CSR-3944-M) IS GRANTED, in accordance with §615(j)(3) of the Communications Act of 1934, as amended, (47 U.S.C. §535). Furthermore, Country Cable Systems IS ORDERED to commence carriage of WPTO-TV on Channel 14 within forty-six (46) days from the release date of this Order on its system serving Greens Fork, Indiana. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's rules, 47 C.F.R. §0.283.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater Dayton CSR-4032-M
Public Television against OH0432
KAS Cable

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: December 23, 1993; Released: February 4, 1994

By the Chief, Mass Media Bureau:

1. On August 23, 1993, a petition on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTO (Educ., Ch. 14), Oxford, Ohio, was filed with the Commission claiming that KAS Cable ("KAS"), operator of a cable television system serving Wright Patterson AFB, Ohio, had declined to carry the station, even though WPTO is within fifty miles of the system's principal headend at Fairborn, Ohio¹ and the station is therefore a "local" signal within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTO requests that the Commission not only order KAS to carry its signal on the cable system, but also order that the system carry it on channel 14, the channel on which it broadcasts over-the-air. No opposition to this petition has been filed.

2. WPTO's petition establishes that it is entitled to carriage on the Wright Patterson AFB system and it has requested carriage on its over-the-air broadcast channel, as it is permitted to do under §5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint filed August 23, 1993, by Greater Dayton Public Television IS GRANTED, in accordance with §615(j)(3) (47 U.S.C. §535) of the Communications Act of 1934, as amended, and KAS Cable IS ORDERED to commence carriage of WPTO on cable channel 14 forty-five (45) days from the release date of this Order. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

¹ We note that KAS Cable has not provided its headend coordinates to WPTO as required by §76.58(b) of the Rules, despite WPTO's letter of May 28, 1993 requesting such informa-

tion. Since no opposition to WPTO's complaint has been filed, we accept petitioner's conclusion that KAS Cable's headend for this system is located at Fairborn, Ohio.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

Roy J. Stewart
Chief, Mass Media Bureau

In re:

Complaint of Greater Dayton CSR-3978-M
Public Television against CSR-3979-M
Northern Ohio Cable

Requests for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: December 6, 1993; Released: January 12, 1994

By the Chief, Mass Media Bureau:

1. On August 2, 1993, petitions on behalf of Greater Dayton Public Television, licensee of Television Broadcast Stations WPTD (Educ., Ch. 16), Dayton, Ohio, and WPTO (Educ., Ch. 14), Oxford, Ohio, were filed with the Commission claiming that Northern Ohio Cable ("Northern"), operator of a cable television system serving portions of Wayne County, Indiana, had declined to carry the stations, even though the cities of license of WPTD and WPTO are within 50 miles of the system's principal headend¹ and the stations are therefore "local" signals within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTD and WPTO also request that the Commission not only order Northern to carry the signals on the cable system, but also order that the system carry them on Channels 16 and 14, respectively, the channels on which they broadcast over-the-air. No opposition to these petitions have been filed.

2. WPTD and WPTO's petitions establish that they are entitled to carriage on the Wayne County system and they have requested carriage on their over-the-air broadcast channels, as they are permitted to do under Section 5 of the 1992 Cable Act. Since no other pleadings have been filed in these matters, the complaints filed August 2, 1993, by Greater Dayton Public Television **ARE GRANTED**, in accordance with §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Northern Ohio Cable **IS ORDERED** to commence carriage of WPTD and WPTO on cable channels 16 and 14 forty-five (45) days from the release date of this *Order*. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

¹ We note that Northern has not provided its headend coordinates to WPTO and WPTD as required by Section 76.54(b) of the Rules, despite the stations' letters of May 28, 1993, requesting carriage. Since no oppositions to WPTO and WPTD's com-

plaints have been filed, we accept petitioner's conclusion that Northern's headend for this system is located within 50 miles of both stations' cities of license.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater Dayton
Public Television against
Sunman Cablevision Company

CSR-3984-M
IN0630

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: December 8, 1993; Released: January 14, 1994

By the Chief, Mass Media Bureau:

1. On August 2, 1993, a petition on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTO (Educ., Ch. 14), Oxford, Ohio, was filed with the Commission claiming that Sunman Cablevision Company ("Sunman"), operator of a cable television system serving Sunman, Indiana, had declined to carry the station, even though WPTO is within fifty miles of the system's principal headend at Sunman¹ and the station is therefore a "local" signal within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTO requests that the Commission not only order Sunman to carry its signal on the cable system, but also order that the system carry it on Channel 14, the channel on which it broadcasts over-the-air. No opposition to this petition has been filed.

2. WPTO's petition establishes that it is entitled to carriage on the Sunman system and it has requested carriage on its over-the-air broadcast channel, as it is permitted to do under Section 5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint filed August 2, 1993, by Greater Dayton Public Television **IS GRANTED**, in accordance with §615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Sunman Cablevision Company **IS ORDERED** to commence carriage of WPTO on cable channel 14 forty-five (45) days from the release date of this Order. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

¹ We note that Sunman Cablevision has not provided its headend coordinates to WPTO as required by Section 867.58(b) of the Rules, despite WPTO's letter of May 28, 1993 requesting carriage. Since no opposition to WPTO's complaint has been

filed, we accept petitioner's conclusion that Sunman Cablevision's headend for this system is located at Sunman, Indiana.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUL 3 1994

IN REPLY REFER TO:
4620-SP

David M. Fogarty
President & General Manager
Greater Dayton Public TV
110 S. Jefferson Street
Dayton, Ohio 45402-2415

In re: Greater Dayton Public TV
(WPTD)
CSR-4038-M

Dear Mr. Fogarty:

On August 27, 1993, you filed a petition for declaratory ruling, on behalf of Greater Dayton Public TV, licensee of Station WPTD (Ind., Ch. 16), Dayton, Ohio, claiming that B&L Cablevision had declined not only to carry its signal, but refused to carry it on Channel 6 on its systems serving Port William and Bowdersville, Ohio. Subsequently, on November 29, 1993, you requested dismissal of this petition as B&L Cablevision has agreed to carry the station on Channel 6, as requested.

In view of the foregoing, pursuant to §0.283 of the Commission's Rules, the petition for declaratory ruling filed August 27, 1993, is dismissed.

Sincerely,

Ronald Parver
Chief, Technical Services Branch
Cable Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater Dayton
Public Television against
Paxton Cable Television, Inc.

CSR-4028-M
OH2024

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: December 23, 1993; Released: February 16, 1994

By the Chief, Mass Media Bureau:

1. On August 26, 1993, a petition on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTD (Educ., Ch. 16), Dayton, Ohio, was filed with the Commission claiming that Paxton Cable Television, Inc. ("Paxton"), operator of a cable television system serving Midway, Ohio, had declined to carry the station, even though WPTD is within fifty miles of the system's principal headend located in Midway at Latitude 39°36'33" and Longitude 84°04'31", and the station is therefore a "local" signal within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTD requests that the Commission not only order Paxton to carry its signal on the cable system, but also order that the system carry it on channel 16, the channel on which it broadcasts over-the-air. No opposition to this petition has been filed.

2. WPTD's petition establishes that it is entitled to carriage on the Midway system and it has requested carriage on its over-the-air broadcast channel, as it is permitted to do under §5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint filed August 26, 1993, by Greater Dayton Public Television IS GRANTED, in accordance with §615(j)(3) (47 U.S.C. §535) of the Communications Act of 1934, as amended, and Paxton Cable Television, Inc. IS ORDERED to commence carriage of WPTD on cable channel 16 forty-five (45) days from the release date of this Order. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Federal Communications Commission

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DA 95-104

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater Dayton
Public Television against
Chillicothe Cablevision dba
Dimension Cable Services

CSR-4027-M
OH0045

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: January 28, 1995; Released: February 2, 1995

By the Cable Services Bureau:

1. On August 26, 1993, a petition on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTD (Educ., Ch. 16), Dayton, Ohio, was filed with the Commission claiming that Chillicothe Cablevision dba Dimension Cable Services ("Dimension"), operator of a cable television system serving Washington Court House, Bloomingburg, Sabina, Jeffersonville, Millersburg, Oeta, Union, and portions of Clinton County, Ohio, had declined to carry the station, even though the city of license of WPTD is within fifty miles of the system's principal headend located at Latitude 39°31'38" and Longitude 83°28'37", and the station is therefore a "local" signal within the meaning of Section 5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTD also requests that the Commission not only order Dimension to carry the signal, but also order the system to carry it on Channel 16, the channel on which it broadcasts over-the-air. Oppositions to this petition were filed on September 16, 1993 and October 21, 1993, on behalf of Dimension, to which WPTD has replied.

2. In support of its request, WPTD states that it was notified by Dimension on April 26, 1993, that it did not provide a good quality signal at Dimension's headend.¹ By letter dated May 28, 1993, WPTD states that it agreed to bear the costs of providing the pre-amplifier necessary to provide a good quality signal, but in a June 25, 1993 response, Dimension placed several conditions on the type, use and ownership of the proposed equipment. On July 27, 1993, WPTD indicates that it reiterated its agreement to bear the costs of the equipment and also agreed to use a Blonder-Tongue SCMA-ub low-noise 25-dB preamplifier. It also requested to discuss the proposal with Dimension, however, WPTD asserts that Dimension neither responded to this request nor commenced carriage of its station.

3. Dimension's September 16, 1993 opposition does not dispute that WPTD is a qualified NCE station, but it maintains that until such time as WPTD provides a good quality signal at Dimension's headend the station is not eligible to be carried. Dimension argues that it has repeatedly expressed its willingness to allow WPTD to provide the equipment necessary to ensure a good quality signal and it will add the station in forty-five days once the equipment is in place. However, Dimension disagrees with WPTD's contention that the station is only obligated to reimburse Dimension for the cost of the necessary equipment. Dimension feels that it should be incumbent upon the requesting station to provide the equipment and it requests that the Commission explicitly state this in its decision.

4. WPTD's response indicates that on September 14, 1993, the parties agreed by telephone that WPTD would purchase a 12.5 dB gain antenna and a pre-amplifier to rectify its signal deficiency at Dimension's headend. Indeed, WPTD states that it ordered the equipment on September 20, 1993, with an expected delivery date in 3-6 weeks. Upon its installation, Dimension agrees that it will be required to add WPTD within 45 days. Despite the fact that in this instance WPTD agreed to purchase the equipment as requested, it disagrees with Dimension's view that a television station should be required to purchase any necessary equipment, rather than provide reimbursement for costs, in all instances. WPTD has encountered many cable system operators that prefer to buy their own equipment. Dimension's requirement is too narrow and would inhibit future negotiations between television stations and cable operators. Therefore, the FCC should not render this type of arrangement mandatory. Finally, WPTD points out that Dimension has made no mention in any of its negotiations that it will carry WPTD on-channel as requested. WPTD requests that the FCC uphold and enforce its right to such carriage.

5. On October 21, 1993, Dimension submitted a second opposition to WPTD's petition. It states that although the problem with signal quality has been resolved, the issue of channel positioning remains an area of contention. Dimension avers that carriage of WPTD on-channel would result in several serious and substantial technical complications and would cause potential interference. Dimension states that channel 16, the channel on which WPTD broadcasts over-the-air, is the aeronautical frequency band on which it maintains a narrow tolerance of 5 kHz, pursuant to §76.612(a)(1) of the Rules. Meeting the on-channel requirement, Dimension contends, would be nearly impossible using standard equipment as the signal processor device required to carry an off-air signal on channel 16 has two local oscillators which will not hold the 5 kHz tolerance. To ensure stability, Dimension states that it would be required to either 1) phase lock the channel 16 processor to a comb generator at a cost of \$6800, or 2) demodulate and modulate the signal at a cost of \$5300. In addition, it continues, further technical modifications, such as additional traps, brackets and "F" connectors, would be necessary solely to carry WPTD on-channel. Dimension maintains that all of this would cost approximately \$31,000 or \$4.30 per subscriber. Further, it feels it likely that the additional traps and "F" connectors would increase signal

¹ Dimension indicated that on April 22, 1993, WPTD was measured at -40 dBm at its headend. The measurements were taken with a Wavetek Sam 10UHF field strength meter and

reception was taken on a Radio Shack Model U-75 UHF broadband antenna 30' above grade.

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Federal Communications Commission

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leakage on its system, thus increasing the system's monitoring and maintenance costs in this area.² Finally, Dimension argues that the use of traps would have a negative variance effect of 5 dB on the signal quality of adjacent channels, particularly the sound carrier. This could cause problems for Dimension in meeting the FCC aural carrier level standards that require cable operators to maintain an aural signal between 10 and 17 dB below the associated visual signal level. Dimension concludes, therefore, that while it recognizes its obligation to honor WPTD's on-channel carriage request, it should be not required to do so in this instance due to the potential problems. It stands prepared to discuss alternative channel positions with WPTD at any time.

6. WPTD requests that the Commission strike Dimension's second opposition as duplicative and untimely. It avers that Dimension had ample opportunity to raise the issue of alleged technical and cost objections to on-channel carriage in its September 16, 1993 filing. Should the FCC consider the arguments raised in this pleading, however, WPTD contends that Dimension's claims are unsubstantiated and it has provided no evidence that clearly demonstrates that it cannot meet this requirement. See Paragraph 91 of the *Report and Order in MM Docket 92-259*, 8 FCC Red 2965 (1993). WPTD argues that there is no "substantial technical or signal security problem" with regard to Dimension's aeronautical frequency band concern. Dimension admits that the technology is readily available to ensure WPTD on-channel carriage. WPTD should therefore not be penalized because cable systems, such as Dimension, have chosen the frequency band of 118-136 MHz for channels 14-16. Moreover, the majority of Ohio and Indiana cable operators which carry WPTD on channel 16 have made equipment modifications at their own expense.³ WPTD states that Dimension's cost estimates, without further documentation, are inadequate and possibly higher than necessary.

7. Further, it maintains that it would be against the intent of the 1992 Cable Act to require an NCE station to pay for a cable system's upgrades in plant in circumstances of this kind. The equipment necessary for on-channel carriage, avers WPTD, should be considered a business investment by the cable system, not the station. In the *Clarification Order in MM Docket 92-259*, 8 FCC Red 4142 (1993), the Commission limited a station's expenditures to situations of low signal level. WPTD has already agreed to incur those expenses in this instance. Further, WPTD contends that Dimension's assertions as to additional equipment needs, signal leakage concerns and alleged effects on audio quality are all speculative, unpersuasive and not considered sufficient to deny an on-channel carriage request. See *Report and Order, supra*, at Paragraph 91. WPTD points out that 1) all of the equipment cited by Dimension is already in use on the system, 2) a potential for signal leakage exists any time a cable is cut to insert traps or equipment, and 3) Dimension's alleged "negative effect" argument is unacceptable without supporting documenta-

tion, particularly when WPTD is aired on channel 16 on other Dayton area cable systems without similar complaints. In conclusion, WPTD requests that the FCC dismiss Dimension's arguments and order it to carry WPTD on-channel as required by the Rules.

8. We are not persuaded by Dimension's request that the FCC explicitly require that any equipment needed to correct the reception of a poor quality signal be purchased by the television station requesting carriage. The *Report and Order, supra*, at paragraph 104 states that "Further, we generally agree with cable interests that it is the television station's obligation to bear the costs associated with delivering a good quality signal to the system's principal headend." (emphasis supplied) Generally, therefore, we would expect that, once those costs have been determined to the parties' satisfaction, the cable operator be the entity responsible for whatever modifications are necessary since the facility is under its control. However, if the parties so desire they are free to make whatever agreements they wish in this regard.

9. Section 614(b)(6) of the 1992 Cable Act permits a must-carry station to elect its over-the-air channel number as its channel position on a cable system and WPTD has properly chosen its over-the-air channel. Further, the Commission has stated previously that cable operators must comply with the channel positioning requirements, absent a compelling technical reason.⁴ Dimension has failed to make such a demonstration. The Commission specifically held that the need to replace traps, or to reconfigure the basic tier, or to make technical changes are generally not grounds for waiver. Carriage of television stations, such as WPTD, on a channel located in the aeronautical frequency band is a common practice in the cable industry. Dimension has failed to demonstrate how its carriage of WPTD on channel 16 would involve any special circumstances beyond the necessity of simply meeting the Commission's technical standards. In this regard, all cable operators are required to routinely monitor their systems to detect and correct signal leakage problems in compliance with the Commission's technical rules. See §76.601 *et seq.* of the Commission's Rules. Further, Station WPTD's obligations to provide a good quality signal stop at the point where such is delivered to Dimension's cable television system's headend. WPTD is under no obligation to pay for the necessary equipment used by the cable system to process and distribute WPTD's signal. See *Report and Order, supra*.

10. Accordingly, in light of the above, we do not believe that a waiver of the must-carry rules with respect to Dimension's system serving Washington Court House, Bloomingburg, Sabina, Jeffersonville, Milledgeville, Octa, Union, and portions of Clinton County, Ohio, serves the public interest.

11. WPTD's petition, therefore, establishes that it is entitled to carriage on the system serving Washington Court House and surrounding communities and it has requested carriage on its over-the-air broadcast channel, as it is

² Dimension states that 33% of its reportable leakage is due to "F" connectors, as well as over 10% of its service calls.

³ WPTD encloses materials from Scientific-Atlanta and the NCTA which describe the available techniques used to comply with the FCC's technical standards.

⁴ As stated in Paragraph 91 of the *Report and Order, supra*, "We do not believe that inconvenience, marketing problems, the need to reconfigure the basic tier or the need to employ addi-

tional traps or make technical changes are sufficient reasons for denying the channel positioning request of a must-carry signal. Only where placement of a signal on a chosen channel results in interference or degraded signal quality to the must-carry station or an adjacent channel, or causes a substantial technical or signal security problem, will we permit cable operators to carry a broadcast signal on a channel not chosen by the station."

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Federal Communications Commission

permitted to do under Section 5 of the 1992 Cable Act. Accordingly, the petition filed August 26, 1993, by Greater Dayton Public Television IS GRANTED, pursuant to Section 615(j)(3) (47 U.S.C. 535) of the Communications Act of 1934, as amended, and Chillicothe Cablevision dba Dimension Cable Services IS ORDERED to commence carriage of WPTD on cable channel 16 forty-five (45) days from the release date of this Order.

12. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau

GD 001991

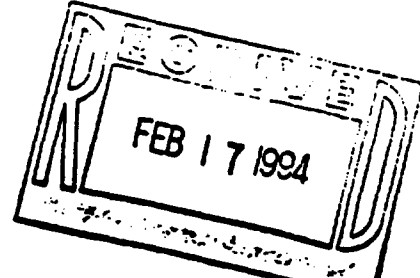


FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEB - 9 1994

IN REPLY REFER TO:
4620-SP

David M. Fogarty, President
Greater Dayton Public Television, Inc.
TeleCenter
110 South Jefferson Street
Dayton, Ohio 45402-2415



In re: Greater Dayton Public Television, Inc.
(WPTD)
CSR-4029-M

Dear Mr. Fogarty:

On August 23, 1993, you filed a petition for declaratory ruling on behalf of Greater Dayton Public Television, Inc., licensee of Station WPTD (Educ., Ch. 16), Dayton, Ohio, claiming that Time Warner Cable had not only declined to carry Station WPTD, but also refused to reposition the station on channel 16 on its system serving Union City, Ohio and Union City, Indiana. Subsequently, on November 3, 1993, you requested dismissal of this petition as Time Warner has agreed to carry WPTD and reposition the station on or before January 1, 1994.

In view of the foregoing, pursuant to §0.283 of the Commission's Rules, the petition for declaratory ruling filed August 23, 1993, on behalf of Station WPTD is dismissed.

Sincerely,

Ronald Parver
Chief, Technical Services Branch
Mass Media Bureau

GD 000612

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

DEC 14 1993

IN REPLY REFER TO:
4620-SP

David M. Fogarty, President
Greater Dayton Public Television, Inc.
TeleCenter
110 South Jefferson Street
Dayton, Ohio 45402-2415

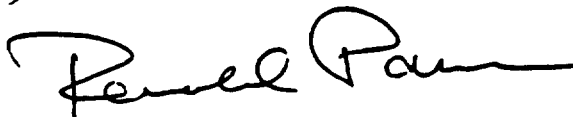
In re: Greater Dayton Public
Television, Inc.
(WPTD)
CSR-4030-M
OH0914

Dear Mr. Fogarty:

On August 26, 1993, you filed a petition for declaratory ruling on behalf of Greater Dayton Public Television, Inc., licensee of Station WPTD (Educ., Ch. 16), Dayton, Ohio, claiming that Time Warner Cable had not only declined to carry Station WPTD, but also refused to reposition the station on channel 16 on its system serving Oxford, Ohio. Subsequently, on November 3, 1993, you requested dismissal of this petition as Time Warner has agreed to carry WPTD and reposition the station.

In view of the foregoing, pursuant to §0.283 of the Commission's Rules, the petition for declaratory ruling filed August 26, 1993, on behalf of Station WPTD is dismissed.

Sincerely,



Ronald Parver
Chief, Technical Services Branch
Cable Services Division
Mass Media Bureau

GD 001271